

Regular Session, 2014

HOUSE BILL NO. 747

BY REPRESENTATIVE MORENO

CRIME/BATTERY: Provides relative to domestic abuse battery and other offenses involving domestic abuse

1 AN ACT

2 To amend and reenact R.S. 14:35.3(B)(3), (4), and (5), (C), (D), (J) and (M) and Code of

3 Criminal Procedure Article 334.2, to enact R.S. 14:2(B)(45) and (46) and 35.3(B)(6),

4 and to repeal Code of Criminal Procedure Article 334.4(A)(4), relative to acts of

5 domestic abuse; to designate domestic abuse battery and domestic abuse aggravated

6 assault as crimes of violence; to provide relative to the crime of domestic abuse

7 battery; to amend penalty provisions of domestic abuse battery for purposes of

8 persons placed on probation; to provide for a definition of "court-approved domestic

9 abuse intervention programs" for purposes of persons on probation for domestic

10 abuse battery; to amend penalties for a second conviction of domestic abuse battery;

11 to provide relative to the designation of an act of violence against a family member

12 as "domestic abuse"; to prohibit release on a person's own recognizance after an

13 arrest for certain offenses related to domestic violence; and to provide for related

14 matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 14:35.3(B)(3), (4), and (5), (C), (D), (J), and (M) are hereby amended

17 and reenacted and R.S. 14:2(B)(45) and (46) and 35.3(B)(6) are hereby enacted to read as

18 follows:

19 §2. Definitions

20 * * *

1 B. In this Code, "crime of violence" means an offense that has, as an
2 element, the use, attempted use, or threatened use of physical force against the
3 person or property of another, and that, by its very nature, involves a substantial risk
4 that physical force against the person or property of another may be used in the
5 course of committing the offense or an offense that involves the possession or use
6 of a dangerous weapon. The following enumerated offenses and attempts to commit
7 any of them are included as "crimes of violence":

8 * * *

9 (45) Domestic abuse battery.

10 (46) Domestic abuse aggravated assault.

11 * * *

12 §35.3. Domestic abuse battery

13 * * *

14 B. For purposes of this Section:

15 * * *

16 (3) "Court-approved domestic abuse intervention program" means a course
17 designed specifically for perpetrators of domestic abuse and conducted by a person
18 with all of the following:

19 (a) Experience in working directly with perpetrators or victims of domestic
20 abuse.

21 (b) Experience in facilitating batterer intervention groups.

22 (c) Training in the causes and dynamics of domestic violence, characteristics
23 of batterers, victim safety, and sensitivity to victims.

24 ~~(3)~~(4) "Household member" means any person of the opposite sex presently
25 living in the same residence or living in the same residence within five years of the
26 occurrence of the domestic abuse battery with the defendant as a spouse, whether
27 married or not, or any child presently living in the same residence or living in the
28 same residence within five years immediately prior to the occurrence of domestic
29 abuse battery, or any child of the offender regardless of where the child resides.

1 ~~(4)~~(5) "Serious bodily injury" means bodily injury that involves
2 unconsciousness, extreme physical pain, or protracted and obvious disfigurement,
3 or protracted loss or impairment of the function of a bodily member, organ, or
4 mental faculty, or a substantial risk of death.

5 ~~(5)~~(6) "Strangulation" means intentionally impeding the normal breathing
6 or circulation of the blood by applying pressure on the throat or neck or by blocking
7 the nose or mouth of the victim.

8 C. On a first conviction, notwithstanding any other provision of law to the
9 contrary, the offender shall be fined not less than three hundred dollars nor more than
10 one thousand dollars and shall be imprisoned for not less than thirty days nor more
11 than six months. At least forty-eight hours of the sentence imposed shall be served
12 without benefit of parole, probation, or suspension of sentence. Imposition or
13 execution of the remainder of the sentence shall not be suspended unless either of the
14 following occur:

15 (1) The offender is placed on probation with a minimum condition that he
16 serve four days in jail and participate in a court-approved domestic abuse ~~prevention~~
17 intervention program, and the offender shall not own or possess a firearm throughout
18 the entirety of the sentence.

19 (2) The offender is placed on probation with a minimum condition that he
20 perform eight, eight-hour days of court-approved community service activities and
21 participate in a court-approved domestic abuse ~~prevention~~ intervention program, and
22 the offender shall not own or possess a firearm throughout the entirety of the
23 sentence.

24 D. On a conviction of a second offense, notwithstanding any other provision
25 of law to the contrary, regardless of whether the second offense occurred before or
26 after the first conviction, the offender shall be fined not less than seven hundred fifty
27 dollars nor more than one thousand dollars and shall be imprisoned at hard labor for
28 not less than sixty days nor more than ~~six months~~ one year. At least fourteen days
29 of the sentence imposed shall be served without benefit of parole, probation, or

1 suspension of sentence, and the offender shall be required to participate in a court-
2 approved domestic abuse prevention program. Imposition or execution of the
3 remainder of the sentence shall not be suspended unless either of the following
4 occur:

5 (1) The offender is placed on probation with a minimum condition that he
6 serve thirty days in jail and participate in a court-approved domestic abuse
7 ~~prevention~~ intervention program, and the offender shall not own or possess a firearm
8 throughout the entirety of the sentence.

9 (2) The offender is placed on probation with a minimum condition that he
10 perform thirty eight-hour days of court-approved community service activities and
11 participate in a court-approved domestic abuse ~~prevention~~ intervention program, and
12 the offender shall not own or possess a firearm throughout the entirety of the
13 sentence.

14 * * *

15 J. Any crime of violence, as defined in R.S. 14:2(B), against a person
16 committed by one household member against another household member, shall be
17 designated as an act of domestic ~~violence~~ abuse for consideration in any civil or
18 criminal proceeding.

19 * * *

20 M. Notwithstanding any other provision of law to the contrary, if the
21 domestic abuse battery is committed by burning that results in serious bodily injury,
22 ~~the offense shall be classified as a crime of violence, and the offender shall be~~
23 imprisoned at hard labor for not less than five nor more than fifty years without
24 benefit of probation, parole, or suspension of sentence.

25 Section 2. Code of Criminal Procedure Article 334.2 is hereby amended and
26 reenacted to read as follows:

1 Art. 334.2. Arrest for a crime of violence ~~or~~ and other offenses related to domestic
2 abuse ~~battery~~; release on own recognizance prohibited

3 Notwithstanding any other provision of law to the contrary, any defendant
4 who has been arrested for ~~domestic abuse battery or for a crime of violence as~~
5 ~~defined in R.S. 14:2(B)~~ any of the following offenses shall not be released by the
6 court on his own recognizance or on the signature of any other ~~person~~: person:

7 (1) Domestic abuse battery.

8 (2) Domestic abuse aggravated assault.

9 (3) False imprisonment.

10 (4) False imprisonment while the offender is armed with a dangerous
11 weapon.

12 (5) A crime of violence as defined by R.S. 14:2(B).

13 (6) Violation of an order issued pursuant to R.S. 9:361 et seq., R.S. 9:372,
14 R.S. 46:2131 et seq., R.S. 46:2151, Children's Code Article 1564 et seq., Code of
15 Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles
16 30, 327.1, 335.2, and 871.1.

17 Section 3. Code of Criminal Procedure Article 334.4(A)(4) is hereby repealed in its
18 entirety.

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. 747

Abstract: Provides relative to domestic abuse battery and other offenses involving domestic abuse.

Present law designates certain crimes as "crimes of violence".

Proposed law adds domestic abuse battery and domestic abuse aggravated assault to the list of crimes of violence.

Present law defines the crime of "domestic abuse battery" as the intentional use of force or violence committed by one household member upon the person of another household member.

Present law provides that an offender may only be placed on probation for a commission of domestic abuse battery if he is required to participate in a court-approved domestic abuse "prevention" program.

Proposed law amends present law to provide that the offender shall be required to participate in a "court-approved domestic abuse intervention program" and provides that such program shall mean a course designed specifically for perpetrators of domestic abuse and conducted by a person with all of the following:

- (1) Experience in working directly with perpetrators or victims of domestic abuse.
- (2) Experience in facilitating batterer intervention groups.
- (3) Training in the causes and dynamics of domestic violence, characteristics of batterers, victim safety, and sensitivity to victims.

Present law provides that person convicted of a second offense domestic abuse battery shall be imprisoned for not less than 60 days nor more than six months.

Proposed law increases this term of imprisonment to not less than 60 days nor more than one year and provides that it shall be served at hard labor.

Present law provides that any crime of violence, as defined in R.S. 14:2(B), against a person committed by one household member against another household member, shall be designated as an act of domestic violence.

Proposed law retains present law, and clarifies that this designation as domestic violence is for purposes of any civil or criminal proceeding authorized by law.

Present law provides that any defendant who has been arrested for domestic abuse battery or for a crime of violence shall not be released on his own recognizance or on the signature of any other person.

Present law provides that any defendant who has been arrested for violation of a protective order shall not be released on his own recognizance or on the signature of any other person if the person has a prior conviction for the same offense.

Proposed law adds domestic abuse aggravated assault, false imprisonment, and false imprisonment while the offender is armed with a dangerous weapon to the list of offenses for which a defendant may not be released on their own recognizance or on the signature of any other person.

Proposed law amends present law to provide that a person shall not be released on his own recognizance or on the signature of any other person for a violation of a protective order issued pursuant to present law regardless of whether the person has a prior conviction for the same offense.

(Amends R.S. 14:35.3(B)(3), (4), and (5), (C), (D), (J) and (M) and C.Cr.P. Art. 334.2 ; Adds R.S. 14:2(B)(45) and (46) and 35.3(B)(6); Repeals C.Cr.P. Art. 334.4(A)(4))