

ACT No. 194

HOUSE BILL NO. 747

BY REPRESENTATIVES MORENO, ADAMS, ARMES, BADON, BILLIOT, BROSSETT, BROWN, TIM BURNS, CONNICK, COX, GISCLAIR, GUILLORY, HARRISON, HENRY, HOWARD, HUNTER, KATRINA JACKSON, JAMES, JEFFERSON, KLECKLEY, NANCY LANDRY, TERRY LANDRY, LEGER, LOPINTO, MILLER, MONTOUCET, JAY MORRIS, PIERRE, POPE, PRICE, REYNOLDS, RICHARD, RITCHIE, SCHRODER, SMITH, ST. GERMAIN, THIBAUT, THIERRY, ALFRED WILLIAMS, AND WOODRUFF AND SENATORS ADLEY, ALARIO, AMEDEE, APPEL, BROOME, BROWN, BUFFINGTON, CORTEZ, DONAHUE, DORSEY-COLOMB, ERDEY, GUILLORY, JOHNS, KOSTELKA, LAFLEUR, LONG, MARTINY, MILLS, MORRELL, MURRAY, PEACOCK, GARY SMITH, THOMPSON, AND WARD

1 AN ACT

2 To amend and reenact R.S. 9:362(7) and 364(A), (B), and (C), R.S. 14:35.3(B)(3), (4), and
3 (5), (C), (D), (H), and (J) and Code of Criminal Procedure Article 334.2, to enact
4 R.S. 14:2(B)(45) and 35.3(B)(6), and to repeal Code of Criminal Procedure Article
5 334.4(A)(4), relative to acts of domestic abuse; to designate domestic abuse
6 aggravated assault as a crime of violence; to provide relative to the crime of
7 domestic abuse battery; to amend penalty provisions of domestic abuse battery for
8 purposes of persons placed on probation; to provide for a definition of "court-
9 monitored domestic abuse intervention programs" for purposes of persons on
10 probation for domestic abuse battery; to amend penalties for a second conviction of
11 domestic abuse battery; to provide relative to the designation of an act of violence
12 against a family member as "domestic abuse"; to prohibit release on a person's own
13 recognizance after an arrest for certain offenses related to domestic violence; to
14 provide relative to child custody when there is a history of family violence; and to
15 provide for related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. R.S. 9:362(7) and 364(A), (B), and (C), R.S. 14:35.3(B)(3), (4), and (5),
18 (C), (D), (H), and (J) are hereby amended and reenacted and R.S. 14:2(B)(45) and 35.3(B)(6)
19 are hereby enacted to read as follows:

1 §362. Definitions

2 As used in this Part:

3 * * *

4 (7) "~~Treatment program~~" means a course of evaluation and psychotherapy
5 designed specifically for perpetrators of family violence, and conducted by licensed
6 mental health professionals. "Court-monitored domestic abuse intervention program"
7 means a program, comprised of a minimum of twenty-six in-person sessions, that
8 follows a model designed specifically for perpetrators of domestic abuse. The
9 offender's progress in the program shall be monitored by the court. The provider of
10 the program shall have all of the following:

11 (a) Experience in working directly with perpetrators and victims of domestic
12 abuse.

13 (b) Experience in facilitating batterer intervention groups.

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

16 * * *

17 §364. Child custody; visitation

18 A. There is created a presumption that no parent who has a history of
19 perpetrating family violence shall be awarded sole or joint custody of children. The
20 court may find a history of perpetrating family violence if the court finds that one
21 incident of family violence has resulted in serious bodily injury or the court finds
22 more than one incident of family violence. The presumption shall be overcome only
23 by a preponderance of the evidence that the perpetrating parent has successfully
24 completed a ~~treatment~~ court-monitored domestic abuse intervention program as
25 defined in R.S. 9:362, is not abusing alcohol and the illegal use of drugs scheduled
26 in R.S. 40:964, and that the best interest of the child or children requires that parent's
27 participation as a custodial parent because of the other parent's absence, mental
28 illness, or substance abuse, or such other circumstances which affect the best interest
29 of the child or children. The fact that the abused parent suffers from the effects of
30 the abuse shall not be grounds for denying that parent custody.

1 B. For purposes of this Section:

2 * * *

3 (3) "Court-monitored domestic abuse intervention program" means a
4 program, comprised of a minimum of twenty-six in-person sessions, that follows a
5 model designed specifically for perpetrators of domestic abuse. The offender's
6 progress in the program shall be monitored by the court. The provider of the
7 program shall have all of the following:

8 (a) Experience in working directly with perpetrators and victims of domestic
9 abuse.

10 (b) Experience in facilitating batterer intervention groups.

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

13 ~~(3)~~(4) "Household member" means any person of the opposite sex presently
14 living in the same residence or living in the same residence within five years of the
15 occurrence of the domestic abuse battery with the defendant as a spouse, whether
16 married or not, or any child presently living in the same residence or living in the
17 same residence within five years immediately prior to the occurrence of domestic
18 abuse battery, or any child of the offender regardless of where the child resides.

19 ~~(4)~~(5) "Serious bodily injury" means bodily injury that involves
20 unconsciousness, extreme physical pain, or protracted and obvious disfigurement,
21 or protracted loss or impairment of the function of a bodily member, organ, or
22 mental faculty, or a substantial risk of death.

23 ~~(5)~~(6) "Strangulation" means intentionally impeding the normal breathing
24 or circulation of the blood by applying pressure on the throat or neck or by blocking
25 the nose or mouth of the victim.

26 C. On a first conviction, notwithstanding any other provision of law to the
27 contrary, the offender shall be fined not less than three hundred dollars nor more than
28 one thousand dollars and shall be imprisoned for not less than thirty days nor more
29 than six months. At least forty-eight hours of the sentence imposed shall be served
30 without benefit of parole, probation, or suspension of sentence. Imposition or

1 execution of the remainder of the sentence shall not be suspended unless either of the
2 following ~~occur~~: occurs:

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

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

12 D. On a conviction of a second offense, notwithstanding any other provision
13 of law to the contrary, regardless of whether the second offense occurred before or
14 after the first conviction, the offender shall be fined not less than seven hundred fifty
15 dollars nor more than one thousand dollars and shall be imprisoned with or without
16 hard labor for not less than sixty days nor more than ~~six months~~ one year. At least
17 fourteen days of the sentence imposed shall be served without benefit of parole,
18 probation, or suspension of sentence, and the offender shall be required to participate
19 in a ~~court-approved~~ court-monitored domestic abuse ~~prevention~~ intervention
20 program. Imposition or execution of the remainder of the sentence shall not be
21 suspended unless either of the following ~~occur~~: occurs:

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

26 (2) The offender is placed on probation with a minimum condition that he
27 perform thirty eight-hour days of court-approved community service activities and
28 participate in a ~~court-approved~~ court-monitored domestic abuse ~~prevention~~

1 intervention program, and the offender shall not own or possess a firearm throughout
2 the entirety of the sentence.

3 * * *

4 H. An offender ordered to participate in a court-monitored domestic abuse
5 ~~prevention~~ intervention program required by the provisions of this Section shall pay
6 the cost incurred in participation in the program. Failure to make such payment shall
7 subject the offender to revocation of probation, unless the court determines that the
8 offender is unable to pay.

9 * * *

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

14 * * *

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

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

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

- 23 (1) Domestic abuse battery.
- 24 (2) Domestic abuse aggravated assault.
- 25 (3) False imprisonment.
- 26 (4) False imprisonment while the offender is armed with a dangerous
27 weapon.
- 28 (5) A crime of violence as defined by R.S. 14:2(B).
- 29 (6) Violation of an order issued pursuant to R.S. 9:361 et seq., R.S. 9:372,
30 R.S. 46:2131 et seq., R.S. 46:2151, Children's Code Article 1564 et seq., Code of

1 Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles
2 30, 327.1, 335.2, and 871.1.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____