

2015 Regular Session

HOUSE BILL NO. 841 (Substitute for House Bill No. 251 by Representative Lopinto)

BY REPRESENTATIVE LOPINTO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

BAIL: Provides relative to a contradictory hearing prior to release on bail in certain cases involving domestic abuse

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 330.3, relative to bail for certain
3 offenses involving domestic abuse; to provide relative to the contradictory hearing
4 held prior to setting bail; to limit the types of offenses for which a contradictory
5 hearing may be required prior to setting bail; to provide for the time period within
6 which the hearing is required to be held; to provide relative to the factors the court
7 shall consider in determining the conditions of bail and whether the defendant shall
8 be held without bail; to provide for definitions; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Code of Criminal Procedure Article 330.3 is hereby amended and
11 reenacted to read as follows:

12 Art. 330.3. Bail hearing for ~~felony~~ certain offenses against a family or household
13 member or dating partner; ~~detention~~

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

15 B. A contradictory bail hearing, as provided for in this Article, ~~shall~~ may be
16 held prior to setting bail for a person in custody who is charged with a domestic
17 abuse battery, violation of protective orders, stalking, or any felony offense involving
18 the use or threatened use of force or a deadly weapon against upon the defendant's
19 ~~family or household member, as defined in R.S. 46:2132~~ R.S. 14:35.3, or against
20 upon the defendant's dating partner or family member, as defined in R.S. 46:2151.

1 ~~C. The~~ If the court shall order orders a contradictory hearing, ~~to the hearing~~
2 shall be held within five days from the date of determination of probable cause,
3 exclusive of weekends and legal holidays. At the contradictory hearing, the court
4 shall determine the conditions of bail or whether the defendant should be held
5 without bail pending trial. If the court decides not to hold a contradictory hearing,
6 it shall notify the prosecuting attorney prior to setting bail.

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

10 ~~E.C.~~ In addition to the factors listed in Article 334 of this Code, in
11 determining whether the defendant should be admitted to bail pending trial, or in
12 determining the conditions of bail, the court judge or magistrate shall take into
13 ~~consideration the~~ consider the following:

14 (1) The previous criminal record history of the defendant.

15 (2) The ~~and any~~ potential threat or danger the defendant poses to the victim,
16 the family of the victim, or to any member of the public, especially children. ~~The~~
17 ~~court also shall perform a risk assessment that will give ample consideration to risk~~
18 ~~factors including substance abuse, gun ownership, record of violence, employment~~
19 ~~status, prior threats with a dangerous weapon, threats to kill, forced sex, choking,~~
20 ~~control of daily activities, threats of suicide, threats to harm children, and any other~~
21 ~~relevant factors.~~

22 (3) Documented history or records of any of the following: substance abuse
23 by the defendant; threats of suicide by the defendant; the defendant's use of force or
24 threats of use of force against any victim; strangulation, forced sex, or controlling the
25 activities of any victim by the defendant; or threats to kill. Documented history or
26 records may include but are not limited to sworn affidavits, police reports, and
27 medical records.

28 ~~F.D.~~ Following the contradictory hearing and based upon the judge's or
29 magistrate's review of the factors set forth in Paragraph C of this Article, the judge

1 or magistrate may order that the defendant not be admitted to bail, upon proof by
2 clear and convincing evidence either that the defendant might flee, or that the
3 defendant poses ~~a threat or danger to the victim, or that the defendant poses an~~
4 ~~imminent danger to any other person or the community, the judge or magistrate may~~
5 ~~order the defendant held without bail pending trial.~~

6 G.E. If bail is granted, with or without a following the contradictory hearing,
7 the judge or magistrate shall comply with the provisions of Article 335.1 or 335.2,
8 as applicable. The judge or magistrate shall consider, as a condition of bail, ~~the court~~
9 ~~may require a requirement that the defendant to wear an electronic monitoring device~~
10 ~~and to be placed under active electronic monitoring and house arrest.~~ The conditions
11 of the electronic monitoring and house arrest shall be determined by the court and
12 may ~~include;~~ include but are not be limited to; to limitation of the defendant's
13 activities outside the home and a curfew. The defendant may be required to pay a
14 reasonable supervision fee to the supervising agency to defray the cost of the
15 required electronic monitoring and house arrest. A violation of the conditions of bail
16 may be punishable by ~~the forfeiture of bail~~ revocation of the bond and the issuance
17 of a bench warrant for the defendant's arrest or remanding of the defendant to
18 custody or a modification of the terms of bail.

19 F. For purposes of this Article:

20 (1) "Dating partner" means any person who is or has been in a social
21 relationship of a romantic or intimate nature with the victim and where the existence
22 of such a relationship shall be determined based on a consideration of the following
23 factors:

24 (a) The length of the relationship.

25 (b) The type of relationship.

26 (c) The frequency of interaction between the persons involved in the
27 relationship.

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

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 841 Reengrossed

2015 Regular Session

Lopinto

Abstract: Provides relative to bail for a person in custody charged with certain offenses involving the use or threatened use of force or a deadly weapon upon a household member, family member, or dating partner.

Present law provides for the following:

- (1) Requires a contradictory hearing to be held within five days prior to setting bail for a person in custody charged with a felony offense against the defendant's family or household member or dating partner as those terms are defined by the Protection from Family Violence Act and the Protection from Dating Violence Act.
- (2) Provides that in addition to hearing whatever evidence it finds relevant, the court shall, with the consent of the prosecuting attorney, perform an ex parte examination of the evidence against the accused.
- (3) Requires the court to also take into consideration the previous criminal record of the defendant and any potential threat or danger the defendant poses to the victim, the family of the victim, or to any member of the public, especially children.
- (4) Requires the court to perform a risk assessment that will give ample consideration to certain risk factors.
- (5) Authorizes the court to order the defendant be held without bail upon proof by clear and convincing evidence that the defendant might flee, that the defendant poses a threat or danger to the victim, or that the defendant poses an imminent danger to any other person or the community.
- (6) Authorizes the court to require a defendant to be placed under active electronic monitoring.
- (7) Provides that a violation of the conditions of bail may be punishable by the forfeiture of bail and the issuance of a bench warrant for the defendant's arrest or remanding of the defendant to custody or a modification of the terms of bail.

Proposed law amends present law as follows:

- (1) Authorizes, instead of requires, a contradictory bail hearing when a defendant is in custody charged with the commission of domestic abuse battery, violation of protective orders, stalking, or any felony offense involving the use or threatened use of force or a deadly weapon upon the defendant's household member, as defined by the present law domestic abuse battery statute, or the defendant's family member or dating partner, as those terms are defined in proposed law.
- (2) Requires any contradictory hearing in this regard to be held within five days from the date of determination of probable cause, exclusive of weekends and holidays, to determine conditions of bail or whether the defendant should be held without bail pending trial. If the court decides not to hold a contradictory hearing, it shall notify the prosecuting attorney prior to setting bail.

- (3) Following a contradictory hearing and based upon the judge's or magistrate's review of certain factors, authorizes the judge or magistrate to order that the defendant be held without bail pending trial upon proof by clear and convincing evidence that the defendant may flee or that the defendant poses an imminent danger to any other person or the community.
- (4) In making this determination or in determining the conditions of bail, requires the court to consider the previous criminal history of the defendant; any potential threat or danger the defendant poses to the victim, the family of the victim, or to any member of the public, especially children; and documented history or records (including sworn affidavits, police reports, or medical records) of substance abuse by the defendant, threats of suicide by the defendant, the defendant's use of force or threats of use of force against any victim, strangulation, forced sex, or controlling the activities of any victim by the defendant, and threats to kill.
- (5) If the judge or magistrate determines that the defendant shall be released on bail, proposed law requires the judge or magistrate to comply with the provisions of present law regarding release on bail for a defendant charged with stalking or an offense against the defendant's family or household member or dating partner, as applicable.
- (6) Requires the court to consider the possibility of requiring the defendant to be placed under active electronic monitoring and house arrest.

(Amends C.Cr.P. Art. 330.3)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Clarify that while the contradictory hearing prior to setting bail is permissive, to hold a defendant without bail, a contradictory hearing is required.
2. Expand the factors that a court is required to consider in determining whether to release the defendant on bail or in determining the conditions of bail.
3. Make technical corrections.