

2015 Regular Session

HOUSE BILL NO. 722

BY REPRESENTATIVES BILLIOT, ARMES, BOUIE, COX, GISCLAIR, HILL,
HONORE, HOWARD, JONES, NANCY LANDRY, TERRY LANDRY,
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Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

FAMILY VIOLENCE: Provides relative to domestic abuse assistance

1 AN ACT

2 To amend and reenact R.S. 46:2131, 2132(3) and (4), 2135(A)(introductory paragraph),
3 2136(A)(introductory paragraph), and 2140(A) and (C)(2)(g), and (3)(b), relative to
4 domestic abuse assistance; to provide relative to domestic abuse between dating
5 partners; to provide relative to non-physical offenses; to provide relative to the
6 issuance of temporary restraining orders; to provide relative to the granting of
7 protective orders; to provide relative to duties of law enforcement officers; and to
8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 46:2131, 2132(3) and (4), 2135(A)(introductory paragraph),
11 2136(A)(introductory paragraph), and 2140(A) and (C)(2)(g) and (3)(b) are hereby amended
12 and reenacted to read as follows:

13 §2131. Purposes

14 The purpose of this Part is to recognize and address the complex legal and
15 social problems created by domestic violence. The legislature finds that existing
16 laws which regulate the dissolution of marriage do not adequately address problems
17 of protecting and assisting the victims of domestic abuse. The legislature further
18 finds that previous societal attitudes have been reflected in the policies and practices
19 of law enforcement agencies and prosecutors which have resulted in different
20 treatment of crimes occurring between family ~~or members~~, household members, or

1 dating partners and those occurring between strangers. It is the intent of the
2 legislature to provide a civil remedy for domestic violence which will afford the
3 victim immediate and easily accessible protection. Furthermore, it is the intent of
4 the legislature that the official response of law enforcement agencies to cases of
5 domestic violence shall stress the enforcement of laws to protect the victim and shall
6 communicate the attitude that violent behavior is not excused or tolerated.

7 §2132. Definitions

8 As used in this Part:

9 * * *

(3) "Domestic abuse" includes but is not limited to physical or sexual abuse and any offense against the person, physical or non-physical, as defined in the Criminal Code of Louisiana, except negligent injury and defamation, committed by one family ~~or~~ member, household member, or dating partner against another. "Domestic abuse" also includes abuse of adults as defined in R.S. 15:1503 when committed by an adult child or adult grandchild.

(4) "Family members" means spouses, former spouses, parents and children, stepparents, stepchildren, foster parents, and foster children. "Household members" means any person of the opposite sex presently or formerly living in the same residence with the defendant as a spouse, whether married or not, who is seeking protection under this Part. "Dating partner" means any person protected from violence under R.S. 46:2151 who is seeking protection under this Part. If a parent or grandparent is being abused by an adult child, adult foster child, or adult grandchild, the provisions of this Part shall apply to any proceeding brought in district court.

25 * * *

26 §2135. Temporary restraining order

A. Upon good cause shown in an ex parte proceeding, the court may enter a temporary restraining order, without bond, as it deems necessary to protect from abuse the petitioner, any minor children, or any person alleged to be an incompetent.

1 Any person who shows immediate and present danger of abuse shall constitute good
2 cause for purposes of this Subsection. The court shall consider any and all past
3 history of abuse, or threats thereof, in determining the existence of an immediate and
4 present danger of abuse. There is no requirement that the abuse itself be recent,
5 immediate, or present. The order may include but is not limited to the following:

6 * * *

7 §2136. Protective orders; content; modification; service

8 A. The court may grant any protective order or approve any consent
9 agreement to bring about a cessation of domestic abuse as defined in R.S.
10 46:2132(3), or the threat or danger thereof, of to a party, any minor children, or any
11 person alleged to be incompetent, which relief may include but is not limited to:

12 * * *

13 §2140. Law enforcement officers; duties

14 A. If a law enforcement officer has reason to believe that a family or
15 household member or dating partner has been abused and the abusing party is in
16 violation of a temporary restraining order, a preliminary or permanent injunction, or
17 a protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et
18 seq., R.S. 46:2151, R.S. 46:2171 et seq., Children's Code Article 1564 et seq., Code
19 of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles
20 30, 327.1, 335.1, 335.2, and 871.1, the officer shall immediately arrest the abusing
21 party.

22 * * *

23 C.

24 * * *

25 (2) In determining if one party is the predominant aggressor, the law
26 enforcement officer may consider any other relevant factors, but shall consider the
27 following factors based upon his or her observation:

28 * * *

1 (g) The existence of a temporary restraining order, a preliminary or
2 permanent injunction, or a protective order issued pursuant to R.S. 9:361 et seq., R.S.
3 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., Children's Code
4 Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of
5 Criminal Procedure Articles 30, 327.1, 335.1, 335.2, and 871.1. The officer shall
6 presume that the predominant aggressor is the person against whom the order was
7 issued.

8 (3)

9 * * *

10 (b) If the officer determines that one person was the predominant aggressor
11 in a misdemeanor offense, the officer shall arrest the predominant aggressor if there
12 is reason to believe that there is impending danger or if the predominant aggressor
13 is in violation of a temporary restraining order, a preliminary or permanent
14 injunction, or a protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372,
15 R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., Children's Code Article
16 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal
17 Procedure Articles 30, 327.1, 335.1, 335.2, and 871.1. If there is no threat of
18 impending danger or no violation of a temporary restraining order, a preliminary or
19 permanent injunction, or a protective order, the officer may arrest the predominant
20 aggressor at the officer's discretion, whether or not the offense occurred in the
21 presence of the officer. An arrest pursuant to the provisions of this Subparagraph
22 shall be subject to the laws governing arrest, including the need for probable cause
23 as otherwise provided by law. The exceptions provided for in this Section shall
24 apply.

25 * * *

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 722 Reengrossed

2015 Regular Session

Billiot

Abstract: Provides relative to domestic abuse assistance, clarifies as to individuals protected and offenses included, provides relative to the issuance of temporary restraining orders and protective orders, and provides relative to duties of law enforcement.

Present law (R.S. 46:2131 et seq.) provides for domestic abuse assistance, hereinafter referred to as the "Domestic Abuse Assistance Act".

Present law provides that domestic abuse includes but is not limited to physical or sexual abuse as defined in the Criminal Code of Louisiana.

Proposed law retains present law but clarifies that domestic abuse may include a non-physical offense as defined in the Criminal Code of Louisiana.

Present law includes only family members and household members as possible victims of domestic abuse.

Proposed law adds dating partners as a possible victim of domestic abuse.

For purposes of the Domestic Abuse Assistance Act, proposed law provides that the term "dating partners" shall have the same meaning as provided in the present law Protection From Dating Violence Act.

Present law allows a court to consider abuse that is not immediate and present during a proceeding for a temporary restraining order.

Proposed law requires a court to consider any and all past history of abuse, or threats thereof, in determining the level of danger during a proceeding for a temporary restraining order, and provides that there is no requirement that the abuse itself be recent, immediate, or present.

Present law allows a court to grant a protective order or approve a consent agreement to bring a cessation of immediate and present danger of abuse or domestic abuse as defined in the Domestic Abuse Assistance Act.

Proposed law retains present law but allows a court to grant a protective order or approve a consent agreement to cease the threat of domestic abuse.

Present law provides for the duties of law enforcement officers relative to situations in which a family or household member or dating partner has been abused and the abusing party is in violation of a temporary restraining order, a preliminary or permanent injunction, or a protective order issued pursuant to present law.

Proposed law provides that these present law duties of law enforcement shall also apply for violations of temporary restraining orders, preliminary or permanent injunctions, or protective orders issued pursuant to present law Protection from Stalking Act (R.S. 46:2171 et seq.).

(Amends R.S. 46:2131, 2132(3) and (4), 2135(A)(intro. para.), 2136(A)(intro. para.), and 2140(A) and (C)(2)(g) and (3)(b))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Add a provision that, with regard to the issuance of a temporary restraining order to protect the petitioner from abuse, requires the court to consider any and all threats of abuse and provides that there is no requirement that the abuse itself be recent, immediate, or present.
2. Clarify the language relative to the issuance of a protective order or approval of a consent agreement to bring about cessation of domestic abuse, as that term is defined by present law, or the cessation of the threat or danger of domestic abuse.

The House Floor Amendments to the engrossed bill:

1. Make technical corrections.