

2015 Regular Session

HOUSE BILL NO. 251

BY REPRESENTATIVES LOPINTO AND JAMES AND SENATOR GALLOT

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

BAIL: Authorizes the use of 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 authorize the court to require a contradictory
4 bail hearing prior to setting bail; to limit the types of offenses for which the court has
5 this authority; to provide relative to the time period within which the hearing shall
6 be held; to provide relative to the factors and evidence the court may consider; to
7 authorize the court to order that the defendant be held without bail; to provide for
8 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 certain felony 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~~ Except as provided in Article 331, when a defendant is in custody
16 charged with the commission of an offense involving the use or threatened use of
17 force or a deadly weapon upon the defendant's household member as defined by R.S.
18 14:35.3 or family member or dating partner as defined by this Article, a judge or
19 magistrate may order the temporary detention of the defendant for a period of not
20 more than five days from the date of determination of probable cause, exclusive of

1 weekends and holidays, pending a contradictory bail hearing, hearing as provided for
2 in this Article, ~~shall be held prior to setting bail for a person in custody who is~~
3 ~~charged with a felony offense against the defendant's family or household member,~~
4 ~~as defined in R.S. 46:2132, or against the defendant's dating partner, as defined in~~
5 ~~R.S. 46:2151.~~

6 C. ~~The court shall order~~ Prior to setting bail for any defendant described in
7 Paragraph A of this Article, a contradictory bail hearing to may be held to determine
8 the conditions of bail or whether the defendant should be held without bail pending
9 trial. This contradictory bail hearing shall be held within five days from the date of
10 determination of probable cause, exclusive of weekends and legal holidays.

11 D. Following the contradictory hearing, the judge or magistrate may order
12 that the defendant not be admitted to bail pending trial if the proof is evident and the
13 presumption of guilt is great and upon proof by clear and convincing evidence that
14 the defendant may flee or that the defendant poses an imminent danger to any other
15 person or the community. At the contradictory hearing the court, in addition to
16 hearing whatever evidence it finds relevant, shall, with the consent of the prosecuting
17 attorney, perform an ex parte examination of the evidence against the accused.

18 E. In addition to the factors listed in Article 334 of this Code, in making the
19 determination of whether the defendant should be admitted to bail pending trial, the
20 judge or magistrate court shall take into consideration the consider the following:

21 (1) The previous criminal record of the defendant, and any

22 (2) Any potential threat or danger the defendant poses to the victim, the
23 family of the victim, or to any member of the public, especially children. The court
24 also shall perform a risk assessment that will give ample consideration to

25 (3) Other risk factors including but not limited to substance abuse, gun
26 ownership, record of violence, employment status, prior threats with a dangerous
27 weapon, threats to kill, forced sex, choking, control of daily activities, threats of
28 suicide, threats to harm children, and any other relevant factors.

1 F. ~~Following the contradictory hearing, upon proof by clear and convincing~~
2 ~~evidence either that the defendant might flee, or that the defendant poses a threat or~~
3 ~~danger to the victim, or that the defendant poses an imminent danger to any other~~
4 ~~person or the community, the judge or magistrate may order the defendant held~~
5 ~~without bail pending trial.~~ If the judge or magistrate determines that the defendant
6 shall be admitted to bail pending trial, the judge or magistrate shall comply with the
7 provisions of Article 335.1 or 335.2 as applicable.

8 G. If bail is granted following the contradictory hearing, as a condition of
9 bail the court may require a defendant to wear an electronic monitoring device and
10 to be placed under active electronic monitoring. The conditions of the electronic
11 monitoring shall be determined by the court and may include, but not be limited to,
12 limitation of the defendant's activities outside the home and a curfew. The defendant
13 may be required to pay a reasonable supervision fee to the supervising agency to
14 defray the cost of the required electronic monitoring.

15 H. A violation of the conditions of bail may be punishable by the forfeiture
16 of bail and the issuance of a bench warrant for the defendant's arrest or remanding
17 of the defendant to custody or a modification of the terms of bail.

18 I. For purposes of this Article:

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

23 (a) The length of the relationship.

24 (b) The type of relationship.

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

27 (2) "Family member" means spouses, former spouses, parents, children,
28 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 251 Original

2015 Regular Session

Lopinto

Abstract: Authorizes the use of a contradictory hearing prior to release on bail in certain cases of domestic abuse against a family member, household 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) Provides that, except in capital cases in which present law requires that the defendant be held without bail, when a defendant is in custody charged with the commission of an offense involving the use or threatened use of force or a deadly weapon upon the defendant's household member or the defendant's family member or dating partner, a judge or magistrate may order the temporary detention of the defendant for a period of not more than five days from the date of the determination of probable cause, exclusive of weekends and holidays, pending a contradictory bail hearing.
- (2) Provides that the contradictory bail hearing may be held to determine the conditions of bail or whether the defendant should be held without bail pending trial.
- (3) Provides that, following the contradictory hearing, the judge or magistrate may order that the defendant be held without bail pending trial, if the proof is evident and the

- presumption of guilt is great and 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, requires the court to consider the previous criminal record 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 other risk factors including but not limited to substance abuse, gun ownership, record of violence, employment status, prior threats with a dangerous weapon, threats to kill, forced sex, choking, control of daily activities, threats of suicide, and threats to harm children.
 - (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) Retains present law relative to the court's authority to order that the defendant be electronically monitored.
 - (7) Provides definitions of "dating partner" and "family member".
- (Amends C.Cr.P. Art. 330.3)