

2015 Regular Session

HOUSE BILL NO. 722

BY REPRESENTATIVE BILLIOT

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), 2136(A), and 2140(A),
3 (C)(2)(g), and (3), relative to domestic abuse assistance; to provide relative to
4 domestic abuse between dating partners; to provide relative to non-physical offenses;
5 to provide relative to the issuance of temporary restraining orders; to provide relative
6 to the granting of protective orders; to provide relative to duties of law enforcement
7 officers; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

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

11 §2131. Purposes

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

1 victim immediate and easily accessible protection. Furthermore, it is the intent of
2 the legislature that the official response of law enforcement agencies to cases of
3 domestic violence shall stress the enforcement of laws to protect the victim and shall
4 communicate the attitude that violent behavior is not excused or tolerated.

5 §2132. Definitions

6 As used in this Part:

7 * * *

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

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

23 * * *

24 §2135. Temporary restraining order

25 A. Upon good cause shown in an ex parte proceeding, the court may enter
26 a temporary restraining order, without bond, as it deems necessary to protect from
27 abuse the petitioner, any minor children, or any person alleged to be an incompetent.
28 Any person who shows immediate and present danger of abuse shall constitute good
29 cause for purposes of this Subsection. The court shall consider any and all past

1 history of abuse alleged by the petitioner when determining the level of danger. The
2 order may include but is not limited to the following:

3 * * *

4 §2136. Protective orders; content; modification; service

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

9 * * *

10 §2140. Law enforcement officers; duties

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

19 * * *

20 C.

21 * * *

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

25 * * *

26 (g) The existence of a temporary restraining order, a preliminary or
27 permanent injunction, or a protective order issued pursuant to R.S. 9:361 et seq., R.S.
28 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., Children's Code
29 Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of

1 Criminal Procedure Articles 30, 327.1, 335.1, 335.2, and 871.1. The officer shall
2 presume that the predominant aggressor is the person against whom the order was
3 issued.

4 (3)

5 * * *

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

21 * * *

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 Original 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 alleged by a petitioner when determining the level of danger during a proceeding for a temporary restraining order.

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.

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