

# Selected Louisiana Domestic Violence Laws

Louisiana Coalition Against Domestic Violence

Updated August 2015

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## **Selected Louisiana Domestic Violence Laws**

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## **Louisiana Code of Criminal Procedure**

### **Art. 30. The peace bond**

A. The peace bond shall be for a specified period, not to exceed six months, and its condition shall be that the defendant will not commit the threatened or any related breach of the peace. The bond shall be for a sum fixed by the magistrate. When fixed by a justice of the peace, the maximum amount of the bond shall not exceed one thousand dollars.

B. If the peace bond is for the purpose of preventing domestic abuse or dating violence, the magistrate shall cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall sign such order, and shall immediately forward it to the clerk of court for filing on the day that the order is issued. The clerk of the issuing court shall transmit the Uniform Abuse Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court, for entry into the Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. The clerk of the issuing court shall also send a copy of the Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), or any modification thereof, to the chief law enforcement officer of the parish where the person or persons protected by the order reside by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer until otherwise directed by the court.

C. The peace bond obligation shall run in favor of the clerk or judge of the court ordering the bond, in favor of the city when ordered by the mayor of a mayor's court, or in favor of the police jury when the bond is ordered by a justice of the peace. The proceeds shall be disposed of in the manner provided by law.

D. The types of security for a peace bond shall be governed by the bail bond rules set forth in Title VIII, as far as applicable.

Amended by Acts 1979, No. 289, §1; Acts 2003, No. 750, §2; Acts 2014, No. 317, §6.

### **Art. 327.1. Bail restrictions to be transmitted to Louisiana Protective Order Registry**

If, as part of a bail restriction, an order is issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person for the purpose of preventing domestic abuse, stalking, dating violence, or sexual assault, the judge shall cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall sign such order, and shall forward it to the clerk of court for filing by the end of the next business day after the order is issued. The clerk of the issuing court shall transmit the Uniform Abuse Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court, for entry into

the Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. The clerk of the issuing court shall also send a copy of the Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), or any modification thereof, to the chief law enforcement officer of the parish where the person or persons protected by the order reside by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer until otherwise directed by the court.

Acts 1997, No. 1156, §3; Acts 2003, No. 750, §2; Acts 2012, No. 197, §3; Acts 2014, No. 317, §6; Acts 2015, No. 242, §1.

**Art. 330.3. Bail hearing for certain offenses against a family or household member or dating partner**

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

B. A contradictory bail hearing, as provided for in this Article, may be held prior to setting bail for a person in custody who is charged with 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 family member, as defined in R.S. 46:2132 or upon the defendant's household member as defined in R.S. 14:35.3, or upon the defendant's dating partner, as defined in R.S. 46:2151. If the court orders a contradictory hearing, the hearing shall be held within five days from the date of determination of probable cause, exclusive of weekends and legal holidays. At the contradictory hearing, the court shall determine the 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.

C. In addition to the factors listed in Article 334, in determining whether the defendant should be admitted to bail pending trial, or in determining the conditions of bail, the judge or magistrate shall consider the following:

(1) The criminal history of the defendant.

(2) The potential threat or danger the defendant poses to the victim, the family of the victim, or to any member of the public, especially children.

(3) Documented history or records of any of the following: 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; or threats to kill. Documented history or records may include but are not limited to sworn affidavits, police reports, and medical records.

D. Following the contradictory hearing and based upon the judge's or magistrate's review of the factors set forth in Paragraph C of this Article, the judge or magistrate may order that the defendant not be admitted to bail, upon proof by clear and convincing evidence either that the defendant might flee, or that the defendant poses an imminent danger to any other person or the community.

E. If bail is granted, with or without a contradictory hearing, the judge or magistrate shall comply with the provisions of Article 335.1 or 335.2, as applicable. The judge or magistrate shall consider, as a condition of bail, a requirement that the defendant wear an electronic monitoring device and be placed under active electronic monitoring and house arrest. The conditions of the electronic monitoring and house arrest shall be determined by the court and may include but are not limited to limitation of the defendant's activities outside the home and a curfew. The defendant may be required to pay a reasonable supervision fee to the supervising agency to defray the cost of the required electronic monitoring and house arrest. A violation of the conditions of bail may be punishable by revocation of the bond 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.

Acts 2014, No. 318, §1; Acts 2015, No. 439, §1.

**Art. 334.2. Arrest for a crime of violence and other offenses related to domestic abuse; release on own recognizance prohibited**

Notwithstanding any other provision of law to the contrary, any defendant who has been arrested for any of the following offenses shall not be released by the court on his own recognizance or on the signature of any other person:

- (1) Domestic abuse battery.
- (2) Domestic abuse aggravated assault.
- (3) False imprisonment.
- (4) False imprisonment while the offender is armed with a dangerous weapon.
- (5) A crime of violence as defined by R.S. 14:2(B).
- (6) Violation of an order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 30, 327.1, 335.2, and 871.1.

Acts 2008, No. 66, §1; Acts 2010, No. 479, §1; Acts 2010, No. 584, §1; Acts 2014, No. 194, §2.



**Art. 334.4. Arrest for certain crimes; release on own recognizance prohibited**

A. Notwithstanding any other provision of law to the contrary, any defendant who has been arrested for any of the following crimes shall not be released by the court on the defendant's own recognizance or on the signature of any other person:

- (1) R.S. 14:32.1 (vehicular homicide).
- (2) R.S. 14:40.3 (cyberstalking), if the person has two prior convictions for the same offense.
- (3) R.S. 14:44.2 (aggravated kidnapping of a child).
- (4) Repealed by Acts 2014, No. 194, §3.
- (5) R.S. 14:87.1 (killing a child during delivery).
- (6) R.S. 14:87.2 (human experimentation).
- (7) R.S. 14:93.3 (cruelty to persons with infirmities), if the person has a prior conviction for the same offense.
- (8) R.S. 14:98 (operating a vehicle while intoxicated), if the person has a prior conviction for the same offense.
- (9) R.S. 14:102.1(B) (aggravated cruelty to animals).
- (10) R.S. 14:102.8 (injuring or killing of a police animal).
- (11) The production, manufacturing, distribution, or dispensing or the possession with the intent to produce, manufacture, distribute or dispense a controlled dangerous substance in violation of R.S. 40:966(B), 967(B), 968(B), 969(B), or 970(B) of the Uniform Controlled Dangerous Substances Law.

B. There shall be a rebuttable presumption that any defendant who has previously been released on his own recognizance or on the signature of any other person on a felony charge, and who has either been arrested for a new felony offense or has at any time failed to appear in court on a felony offense after having been notified in open court, shall not be released on his own recognizance or on the signature of any other person. This presumption may be overcome if the judge determines, after contradictory hearing in open court, that a review of the relevant factors warrants this type of release. The hearing shall take place within thirty days of the defendant's release.

Acts 2012, No. 773, §1; Acts 2013, No. 261, §1; Acts 2014, No. 194, §3; Acts 2014, No. 811, §31, eff. June 23, 2014.

**Art. 335.1. Offenses against a family or household member or dating partner; victims of sexual assault; provisions for forfeiture, arrest, modification**

A.(1)(a) In determining conditions of release of a defendant who is alleged to have committed an offense against the defendant's family or household member, as defined in R.S. 46:2132(4), or against the defendant's dating partner, as defined in R.S. 46:2151, or who is alleged to have committed the offense of domestic abuse battery under the provisions of R.S. 14:35.3, or who is alleged to have committed the offense of stalking under the provisions of R.S. 14:40.2, or who is alleged to have committed a sexual assault as defined in R.S. 46:2184, the court shall consider whether the defendant poses a threat or danger to the victim. If the court determines that the defendant poses such a threat or danger, it shall require as a condition of bail that the defendant refrain from going to the residence or household of the victim, the victim's school, and the victim's place of employment or otherwise contacting the victim in any manner whatsoever, and shall refrain from having any further contact with the victim.

(b) If, as part of a bail restriction, an order is issued pursuant to the provisions of this Paragraph, the judge shall cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2, shall sign such order, and shall immediately forward it to the clerk of court for filing, on the next business day after the order is issued. The clerk of the issuing court shall transmit the Uniform Abuse Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court, for entry into the Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. The clerk of the issuing court shall also send a copy of the Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), or any modification thereof, to the chief law enforcement officer of the parish where the person or persons protected by the order reside. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer until otherwise directed by the court.

(c) Except as provided in Subsubparagraph (d) of this Subparagraph, if, as part of a bail restriction, an order is issued pursuant to the provisions of this Paragraph, the court shall also order that the defendant be prohibited from possessing a firearm for the duration of the Uniform Abuse Prevention Order. For the purposes of this Subsubparagraph, "firearm" means any pistol, revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon, or assault rifle that is designed to fire or is capable of firing fixed cartridge ammunition or from which a shot or projectile is discharged by an explosive.

(d) If, as part of a bail restriction, an order is issued pursuant to the provisions of this Paragraph and the alleged offense is sexual assault as defined in R.S. 46:2184, the court may order that the defendant be prohibited from possessing a firearm for the duration of the Uniform Abuse Prevention Order. For the purposes of this Subsubparagraph, "firearm" means any pistol, revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon, or assault rifle that is designed to fire or is capable of firing fixed cartridge ammunition or from which a shot or projectile is discharged by an explosive.

(2)(a) In addition, the court may order the defendant to be equipped with a global positioning monitoring system as a condition of release on bail pursuant to Paragraph B of this Article.

(b) In determining whether to order a defendant, as a condition of release on bail, to participate in global positioning system monitoring, the court shall consider the likelihood that the defendant's participation in global positioning system monitoring will deter the defendant from seeking to harm, injure, or otherwise threaten the victim prior to trial.

(c) The defendant shall be released on bail pursuant to the provisions of this Article only if he agrees to pay the cost of the global positioning monitoring system and monitoring fees associated with the device, or agrees to perform community service in lieu of paying such costs.

B.(1)(a) If the court orders the defendant to be equipped with a global positioning monitoring system as a condition of release on bail, the court may order the defendant, with the informed consent of the victim, to provide the victim of the charged crime with an electronic receptor device which is capable of receiving the global positioning system information and which notifies the victim if the defendant is located within an established proximity to the victim.

(b) The court, in consultation with the victim, shall determine which areas the defendant shall be prohibited from accessing and shall establish the proximity to the victim within which a defendant shall be excluded. In making this determination, the court shall consider a list, provided by the victim, which includes those areas from which the victim desires the defendant to be excluded.

(2) The victim shall be furnished with telephone contact information for the local law enforcement agency in order to request immediate assistance if the defendant is located within that proximity to the victim.

(3) The court shall order the global positioning monitoring system provider to program the system to notify local law enforcement if the defendant violates the order.

(4) The victim, at any time, may request that the court terminate the victim's participation in the global positioning monitoring system of the defendant.

(5) The court shall not impose sanctions on the victim for refusing to participate in global positioning system monitoring provided for in this Paragraph.

C. For the purpose of this Section:

(1) "Global positioning monitoring system" means a system that electronically determines and reports the location of an individual by means of an ankle bracelet transmitter or similar device worn by the individual that transmits latitude and longitude data to monitoring authorities through global positioning satellite technology but does not contain or operate any global positioning system technology or radio frequency identification technology or similar technology that is implanted in or otherwise invades or violates the corporeal body of the individual.

(2) "Informed consent" means that the victim was given information concerning all of the following before consenting to participate in global positioning system monitoring:

(a) The victim's right to refuse to participate in global positioning system monitoring and the process for requesting the court to determine the victim's participation after it has been ordered.

(b) The manner in which the global positioning monitoring system technology functions and the risks and limitations of that technology, and the extent to which the system will track and record the victim's location and movements.

(c) The boundaries imposed on the defendant during the global positioning system monitoring.

(d) Sanctions that the court may impose on the defendant for violating an order issued under this Article.

(e) The procedure that the victim is to follow if the defendant violates an order issued under this Article or if global positioning monitoring system equipment fails.

(f) Identification of support services available to assist the victim to develop a safety plan to use if the court's order issued under this Article is violated or if the global positioning monitoring system equipment fails.

(g) Identification of community services available to assist the victim in obtaining shelter, counseling, education, child care, legal representation, and other help in addressing the consequences and effects of domestic violence or stalking.

(h) The nonconfidential nature of the victim's communications with the court concerning global positioning system monitoring and the restrictions to be imposed upon the defendant's movements.

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

Acts 1994, 3rd Ex. Sess., No. 70, §3; Acts 1999, No. 963, §3; Acts 2003, No. 750, §2; Acts 2010, No. 126, §1; Acts 2014, No. 318, §1; Acts 2015, No. 242, §1.

### **Art. 335.2. Stalking; conditions of release**

A. In determining conditions of release of a defendant who is alleged to have committed the crime of stalking pursuant to the provisions of R.S. 14:40.2, the court shall consider whether the defendant poses a threat or danger to the victim. If the court determines that the defendant poses such a threat or danger, it shall require as a condition of bail that the defendant refrain from going to the residence or household of the victim, the victim's school, and the victim's place of employment, or otherwise

contacting the victim in any manner whatsoever, and shall refrain from having any further contact with the victim.

B. A violation of the conditions of release may be punishable by the forfeiture of bail and issuance of a bench warrant for the arrest of the defendant or remanding the defendant to custody or a modification of the terms of bail.

C. If, as part of a bail restriction, an order is issued pursuant to the provisions of this Article, the judge shall cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2, shall sign such order, and shall forward it to the clerk of court for filing by the end of the next business day after the order is issued. The clerk of the issuing court shall transmit the Uniform Abuse Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court, for entry into the Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. The clerk of the issuing court shall also send a copy of the Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), or any modification thereof, to the chief law enforcement officer of the parish where the person or persons protected by the order reside by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer until otherwise directed by the court.

Acts 2012, No. 197, §3; Acts 2014, No. 317, §6.

#### **Art. 387. Additional information required when prosecuting certain offenses**

A. When instituting the prosecution of an offense involving a violation of any state law or local ordinance that prohibits the use of force or a deadly weapon against any family member as defined by R.S. 14:35.3 or any household member as defined by R.S. 14:35.3, the district attorney, or city prosecutor for criminal prosecutions in city court, shall include the following information in the indictment, information, or affidavit:

(1) Date of the offense.

(2) The state identification number of the defendant, if one has been assigned to the defendant for this offense or for any prior offenses.

B. Failure to comply with the provisions of this Article shall not constitute grounds for a motion to quash.

Acts 2015, No. 440, §4.

**Art. 871.1. Sentencing orders to be sent to Louisiana Protective Order Registry**

If part of the sentence contains an order for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical proximity to, another person in order to prevent domestic abuse or dating violence, the judge shall cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall sign such order, and shall immediately forward it to the clerk of court for filing on the day that the order is issued. The clerk of the issuing court shall transmit the Uniform Abuse Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court, for entry into the Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. The clerk of the issuing court shall also send a copy of the Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), or any modification thereof, to the chief law enforcement officer of the parish where the person or persons protected by the order reside by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer until otherwise directed by the court.

Acts 1997, No. 1156, §3; Acts 2003, No. 750, §2; Acts 2014, No. 317, §6.

**Art. 883.2. Restitution to victim**

A. In all cases in which the court finds an actual pecuniary loss to a victim, or in any case where the court finds that costs have been incurred by the victim in connection with a criminal prosecution, the trial court shall order the defendant to provide restitution to the victim as a part of any sentence that the court shall impose.

B. Additionally, if the defendant agrees as a term of a plea agreement, the court shall order the defendant to provide restitution to other victims of the defendant's criminal conduct, although those persons are not the victim of the criminal charge to which the defendant pleads. Such restitution to other persons may be ordered pursuant to Article 895 or 895.1 of this Code or any other provision of law permitting or requiring restitution to victims.

C. The court shall order that all restitution payments be made by the defendant to the victim through the court's designated intermediary, and in no case shall the court order the defendant to deliver or send a restitution payment directly to a victim, unless the victim consents.

D. Notwithstanding any other provision of law to the contrary, if the defendant is found to be indigent and therefore unable to make restitution in full at the time of conviction, the court may order a periodic payment plan consistent with the person's financial ability.

Acts 1999, No. 783, §3, eff. Jan. 1, 2000; Acts 1999, No. 988, §1; Acts 2007, No. 22, §1; Acts 2010, No. 160, §1; Acts 2014, No. 180, §1.

**Art. 890.1. Waiver of minimum mandatory sentences; procedure; exceptions**

A. Notwithstanding any other provision of law to the contrary, if a felony or misdemeanor offense specifies a sentence with a minimum term of confinement or a minimum fine, or that the sentence shall be served without benefit of parole, probation, or suspension of sentence, the court, upon conviction, in sentencing the offender shall impose the sentence as provided in the penalty provisions for that offense, unless one of the following occurs:

(1) The defendant pled guilty pursuant to a negotiated plea agreement with the prosecution and the court, which specifies that the sentence shall be served with benefit of parole, probation, or suspension of sentence or specifies a reduced fine or term of confinement.

(2) In cases resulting in trial, the prosecution, the defendant, and the court entered into a post-conviction agreement, which specifies that the sentence shall be served with benefit of parole, probation, or suspension of sentence or specifies a reduced fine or term of confinement.

B. If such agreements are entered into between the prosecution and the defendant, the court, at sentencing, shall not impose a lesser term of imprisonment, lesser fine, or lesser period of sentence served without benefit of parole, probation, or suspension of sentence than that expressly provided for under the terms of the plea or post-conviction agreement.

C. No plea or post-conviction agreement shall provide parole eligibility at a time earlier than that provided in R.S. 15:574.4.

D. The provisions of this Article shall not apply to a sex offense as defined in R.S. 15:541 or to any of the following crimes of violence:

- (1) R.S. 14:28.1 (Solicitation for murder).
- (2) R.S. 14:30 (First degree murder).
- (3) R.S. 14:30.1 (Second degree murder).
- (4) R.S. 14:31 (Manslaughter).
- (5) R.S. 14:34.6 (Disarming of a peace officer).
- (6) R.S. 14:34.7 (Aggravated second degree battery).
- (7) R.S. 14:37.1 (Assault by drive-by shooting).
- (8) R.S. 14:37.4 (Aggravated assault with a firearm).
- (9) R.S. 14:42 (Aggravated or first degree rape).
- (10) R.S. 14:42.1 (Forcible or second degree rape).
- (11) R.S. 14:43 (Simple or third degree rape).

- (12) R.S. 14:43.1 (Sexual battery).
- (13) R.S.14:43.2 (Second degree sexual battery).
- (14) R.S. 14:43.5 (Intentional exposure to AIDS virus).
- (15) R.S. 14:44 (Aggravated kidnapping).
- (16) R.S. 14:44.1 (Second degree kidnapping).
- (17) R.S. 14:46.2 (Human trafficking).
- (18) R.S.14:46.3 (Trafficking of children for sexual purposes).
- (19) R.S.14:51 (Aggravated arson).
- (20) R.S. 14:62.8 (Home invasion).
- (21) R.S. 14:64 (Armed robbery).
- (22) R.S. 14:64.4 (Second degree robbery).
- (23) R.S. 14:64.3 (Armed robbery; use of firearm).
- (24) R.S. 14:64.2 (Carjacking).
- (25) R.S. 14:78.1 (Aggravated incest).
- (26) R.S. 14:93.2.3 (Second degree cruelty to juveniles).
- (27) R.S.14:128.1 (Terrorism).
- (28) R.S. 14:34 (Aggravated battery).
- (29) R.S. 14:37 (Aggravated assault).
- (30) R.S. 14:34.1 (Second Degree Battery)
- (31) R.S. 14:35.3 (Domestic Abuse Battery)
- (32) R.S. 14:40.2 (Stalking)
- (33) R.S. 14:64.1 (First Degree Robbery)
- (34) R.S. 14:32.5 (Feticide)

E. At the time the sentence is imposed pursuant to this Article, the Uniform Commitment Sentencing Order shall specify that the sentence is imposed pursuant to the provisions of this Article.

Acts 2012, No. 160, §1, eff. May 17, 2012; Acts 2014, No. 634, §1; Acts 2015, No. 184, §6.



**Art. 977. Motion to expunge a record of arrest and conviction of a misdemeanor offense**

A. A person may file a motion to expunge his record of arrest and conviction of a misdemeanor offense if either of the following apply:

(1) The conviction was set aside and the prosecution was dismissed pursuant to Article 894(B) of this Code.

(2) More than five years have elapsed since the person completed any sentence, deferred adjudication, or period of probation or parole, and the person has not been convicted of any felony offense during the five-year period, and has no felony charge pending against him. The motion filed pursuant to this Subparagraph shall include a certification obtained from the district attorney which verifies that to his knowledge the applicant has no felony convictions during the five-year period and no pending felony charges under a bill of information or indictment.

B. The motion to expunge a record of arrest and conviction of a misdemeanor offense shall be served pursuant to the provisions of Article 979 of this Code.

C. No person shall be entitled to expungement of a record under any of the following circumstances:

(1) The misdemeanor conviction arose from circumstances involving or is the result of an arrest for a sex offense as defined in R.S. 15:541, except that an interim expungement shall be available as authorized by the provisions of Article 985.1 of this Code.

(2) The misdemeanor conviction was for domestic abuse battery.

(3) The misdemeanor conviction was for stalking (R.S. 14:40.2).

D.(1) Expungement of a record of arrest and conviction of a misdemeanor offense shall occur only once with respect to any person during a five-year period, unless the person was sentenced pursuant to Article 894(B) of this Code.

(2) Expungement of a record of arrest and conviction of a misdemeanor offense of operating a vehicle while intoxicated shall occur only once with respect to any person during a ten-year period.

Acts 2014, No. 145, §1; Acts 2015, No. 151, §1, eff. June 23, 2015; Acts 2015, No. 200, §1.

## **Louisiana Civil Code**

### **Art. 103. Judgment of divorce; other grounds**

Except in the case of a covenant marriage, a divorce shall be granted on the petition of a spouse upon proof that:

(1) The spouses have been living separate and apart continuously for the requisite period of time, in accordance with Article 103.1, or more on the date the petition is filed.

(2) The other spouse has committed adultery.

(3) The other spouse has committed a felony and has been sentenced to death or imprisonment at hard labor.

(4) During the marriage, the other spouse physically or sexually abused the spouse seeking divorce or a child of one of the spouses, regardless of whether the other spouse was prosecuted for the act of abuse.

(5) After a contradictory hearing or consent decree, a protective order or an injunction was issued during the marriage, in accordance with law, against the other spouse to protect the spouse seeking the divorce or a child of one of the spouses from abuse.

Acts 1990, No. 1009, §2, eff. Jan. 1, 1991; Acts 1991, No. 918, §1; Acts 1997, No. 1380, §1; Acts 2006, No. 743, §1, eff. Jan. 1, 2007; Acts 2014, No. 316, §1; Acts 2015, No. 221, §1.

NOTE: See Acts 2015, No. 221, §4, regarding applicability.

### **Art. 103.1. Judgment of divorce; time periods**

The requisite periods of time, in accordance with Articles 102 and 103 shall be as follows:

(1) One hundred eighty days where there are no minor children of the marriage.

(2) Three hundred sixty-five days when there are minor children of the marriage at the time the rule to show cause is filed in accordance with Article 102 or a petition is filed in accordance with Article 103.

Acts 2006, No. 743, §1, eff. Jan. 1, 2007; Acts 2010, No. 604, §1, eff. June 25, 2010; Acts 2014, No. 316, §1.

**Art. 112. Determination of final periodic support**

A. When a spouse has not been at fault prior to the filing of a petition for divorce and is in need of support, based on the needs of that party and the ability of the other party to pay, that spouse may be awarded final periodic support in accordance with Paragraph C of this Article.

B. When a spouse has not been at fault prior to the filing of a petition for divorce and the court determines that party was the victim of domestic abuse committed during the marriage by the other party, that spouse shall be awarded final periodic support or a lump sum award, at the discretion of the court, in accordance with Paragraph C of this Article.

C. The court shall consider all relevant factors in determining the amount and duration of final support, including:

- (1) The income and means of the parties, including the liquidity of such means.
- (2) The financial obligations of the parties, including any interim allowance or final child support obligation.
- (3) The earning capacity of the parties.
- (4) The effect of custody of children upon a party's earning capacity.
- (5) The time necessary for the claimant to acquire appropriate education, training, or employment.
- (6) The health and age of the parties.
- (7) The duration of the marriage.
- (8) The tax consequences to either or both parties.
- (9) The existence, effect, and duration of any act of domestic abuse committed by the other spouse upon the claimant, regardless of whether the other spouse was prosecuted for the act of domestic violence.

D. The sum awarded under this Article shall not exceed one-third of the obligor's net income; however, where support is awarded pursuant to Paragraph B of this Article, the sum awarded may exceed one-third of the obligor's net income.

Amended by Acts 1916, No. 247; Acts 1928, No. 21; Acts 1934, 2nd Ex.Sess., No. 27; Acts 1964, No. 48; Acts 1979, No. 72, §1; Acts 1982, No. 293, §1; Acts 1986, No. 229, §1; Acts 1997, No. 1078, §1, eff. Jan. 1, 1998; Acts 2006, No. 749, §1, eff. June 30, 2006; Acts 2014, No. 316, §1; Acts 2014, No. 616, §1.

**Art. 113. Interim spousal support allowance pending final spousal support award**

A. Upon motion of a party or when a demand for final spousal support is pending, the court may award a party an interim spousal support allowance based on the needs of that party, the ability of the other party to pay, any interim allowance or final child support obligation, and the standard of living of the parties during the marriage, which award of interim spousal support allowance shall terminate upon the rendition of a judgment of divorce.

B. If a claim for final spousal support is pending at the time of the rendition of the judgment of divorce, the interim spousal support award shall thereafter terminate upon rendition of a judgment awarding or denying final spousal support or one hundred eighty days from the rendition of judgment of divorce, whichever occurs first. The obligation to pay interim spousal support may extend beyond one hundred eighty days from the rendition of judgment of divorce, but only for good cause shown.

C. Notwithstanding Paragraph B of this Article, if a claim for final spousal support is pending at the time of the rendition of a judgment of divorce pursuant to Article 103(4) or (5) and the final spousal support award does not exceed the interim spousal support award, the interim spousal support award shall thereafter terminate no less than one hundred eighty days from the rendition of judgment of divorce. The obligation to pay final spousal support shall not begin until after an interim spousal support award has terminated.

Acts 1997, No. 1078, §1, eff. Jan. 1, 1998; Acts 2001, No. 738, §1; Acts 2003, No. 1092, §1; Acts 2014, No. 316, §1; Acts 2014, No. 616, §1.

**Art. 2315.8. Liability for damages caused by domestic abuse**

A. In addition to general and special damages, exemplary damages may be awarded upon proof that the injuries on which the action is based were caused by a wanton and reckless disregard for the rights and safety of a family or household member, as defined in R.S. 46:2132, through acts of domestic abuse resulting in serious bodily injury or severe emotional and mental distress, regardless of whether the defendant was prosecuted for his or her acts.

B. Upon motion of the defendant or upon its own motion, if the court determines that any action alleging domestic abuse is frivolous or fraudulent, the court shall award costs of court, reasonable attorney fees, and any other related costs to the defendant and any other sanctions and relief requested pursuant to Code of Civil Procedure Article 863.

Acts 2014, No. 315, §1.

**Art. 2362.1. Obligation incurred in an action for divorce**

A. An obligation incurred before the date of a judgment of divorce for attorney fees and costs in an action for divorce and in incidental actions is deemed to be a community obligation.

B. Notwithstanding the provisions of Paragraph A of this Article, the court may assess attorney fees and costs in an action for divorce granted pursuant to Article 103(4) or (5) and in incidental actions thereafter against the perpetrator of abuse, which shall be a separate obligation of the perpetrator.

Acts 1990, No. 1009, §3, eff. Jan. 1, 1991; Acts 2009, No. 204, §1; Acts 2015, No. 221, §1.

## **Louisiana Code of Civil Procedure**

### **Art. 1702. Confirmation of default judgment**

A. A judgment of default must be confirmed by proof of the demand that is sufficient to establish a prima facie case and that is admitted on the record prior to confirmation. The court may permit documentary evidence to be filed in the record in any electronically stored format authorized by the local rules of the district court or approved by the clerk of the district court for receipt of evidence. If no answer is filed timely, this confirmation may be made after two days, exclusive of holidays, from the entry of the judgment of default. When a judgment of default has been entered against a party that is in default after having made an appearance of record in the case, notice of the date of the entry of the judgment of default must be sent by certified mail by the party obtaining the judgment of default to counsel of record for the party in default, or if there is no counsel of record, to the party in default, at least seven days, exclusive of holidays, before confirmation of the judgment of default.

B.(1) When a demand is based upon a conventional obligation, affidavits and exhibits annexed thereto which contain facts sufficient to establish a prima facie case shall be admissible, self-authenticating, and sufficient proof of such demand. The court may, under the circumstances of the case, require additional evidence in the form of oral testimony before entering judgment.

(2) When a demand is based upon a delictual obligation, the testimony of the plaintiff with corroborating evidence, which may be by affidavits and exhibits annexed thereto which contain facts sufficient to establish a prima facie case, shall be admissible, self-authenticating, and sufficient proof of such demand. The court may, under the circumstances of the case, require additional evidence in the form of oral testimony before entering judgment.

(3) When the sum due is on an open account or a promissory note or other negotiable instrument, an affidavit of the correctness thereof shall be prima facie proof. When the demand is based upon a promissory note or other negotiable instrument, no proof of any signature thereon shall be required.

C. In those proceedings in which the sum due is on an open account or a promissory note, other negotiable instrument, or other conventional obligation, or a deficiency judgment derived therefrom, including those proceedings in which one or more mortgages, pledges, or other security for the open account, promissory note, negotiable instrument, conventional obligation, or deficiency judgment derived therefrom is sought to be enforced, maintained, or recognized, or in which the amount sought is that authorized by R.S. 9:2782 for a check dishonored for nonsufficient funds, a hearing in open court shall not be required unless the judge, in his discretion, directs that such a hearing be held. The plaintiff shall submit to the court the proof required by law and the original and not less than one copy of the proposed final judgment. The judge shall, within seventy-two hours of receipt of such submission from the clerk of court, sign the judgment or direct that a hearing be held. The clerk of court shall certify that no answer or other pleading has been filed by the defendant. The minute clerk shall make an entry

showing the dates of receipt of proof, review of the record, and rendition of the judgment. A certified copy of the signed judgment shall be sent to the plaintiff by the clerk of court.

D. When the demand is based upon a claim for a personal injury, a sworn narrative report of the treating physician or dentist may be offered in lieu of his testimony.

E. Notwithstanding any other provisions of law to the contrary, when the demand is for divorce under Civil Code Article 103(1) or (5), whether or not the demand contains a claim for relief incidental or ancillary thereto, a hearing in open court shall not be required unless the judge, in his discretion, directs that a hearing be held. The plaintiff shall submit to the court an affidavit specifically attesting to and testifying as to the truth of all of the factual allegations contained in the petition, the original and not less than one copy of the proposed final judgment, and a certification which shall indicate the type of service made on the defendant, the date of service, the date a preliminary default was entered, and a certification by the clerk that the record was examined by the clerk, including the date of the examination, and a statement that no answer or other opposition has been filed. If no answer or other pleading has been filed by the defendant, the judge shall, after two days, exclusive of holidays, of entry of a preliminary default, review the affidavit, proposed final judgment, and certification, render and sign the judgment, or direct that a hearing be held. The minutes shall reflect rendition and signing of the judgment.

Acts 1983, No. 266, §1, eff. Jan. 1, 1984; Acts 1986, No. 219, §1; Acts 1986, No. 285, §1; Acts 1986, No. 430, §1; Acts 1987, No. 182, §1; Acts 1987, No. 271, §1; Acts 1990, No. 1009, §4, eff. Jan. 1, 1991; Acts 1992, No. 292, §1 ; Acts 2001, No. 512, §1; Acts 2008, No. 354, §1, eff. June 21, 2008; Acts 2013, No. 78, §1; Acts 2014, No. 791, §20; Acts 2015, No. 221, §2

#### **Art. 1911. Final judgment; partial final judgment; signing; appeals**

A. Except as otherwise provided by law, every final judgment shall contain the typewritten or printed name of the judge and be signed by the judge. Any judgment that does not contain the typewritten or printed name of the judge shall not be invalidated for that reason. Except as otherwise provided by law, every final judgment shall be signed by the judge. Judgments may be signed by the judge by use of electronic signature. The various courts shall provide by court rule for the method of electronic signature to be used and to ensure the authenticity of the electronic signature.

B. For the purpose of an appeal as provided in Article 2083, no appeal may be taken from a final judgment until the requirement of this Article has been fulfilled. No appeal may be taken from a partial final judgment under Article 1915(B) until the judgment has been designated a final judgment under Article 1915(B). An appeal may be taken from a final judgment under Article 1915(A) without the judgment being so designated.

Amended by Acts 1974, No. 87, §1; Acts 1979, No. 618, §1; Acts 1999, No. 1263, §1, eff. Jan. 1, 2000; Acts 2014, No. 144, §1; Acts 2014, No. 606, §1.

**Art. 3603.1. Governing provisions for issuance of protective orders; grounds; notice; court-appointed counsel**

A. Notwithstanding any provision of law to the contrary, and particularly the provisions of Domestic Abuse Assistance, Part II of Chapter 28 of Title 46, Post-Separation Family Violence Relief Act and Injunctions and Incidental Orders, Parts IV and V of Chapter 1 of Code Title V of Title 9, Domestic Abuse Assistance, Chapter 8 of Title XV of the Children's Code, and this Chapter, no temporary restraining order or preliminary injunction prohibiting a spouse or other person from harming or going near or in the proximity of another shall issue, unless the complainant has good and reasonable grounds to fear for his or her safety or that of the children, or the complainant has in the past been the victim of domestic abuse by the other spouse.

B. Any person against whom such an order is issued shall be entitled to a court-appointed attorney if the applicant has likewise been afforded a court-appointed attorney, which right shall also be included in any order or notice.

C.(1) A complainant seeking protection from domestic abuse, dating violence, stalking, or sexual assault shall not be required to prepay or be cast with court costs or costs of service of subpoena for the issuance or dissolution of a temporary restraining order, preliminary or permanent injunction, or protective order , or the dismissal of a petition for such, and the clerk of court shall immediately file and process the order issued regardless of the ability of the plaintiff to pay court costs.

(2) When the complainant is seeking protection from domestic abuse, stalking, or sexual assault, the clerk of court shall make forms available for making application for protective orders, provide clerical assistance to the petitioner when necessary, provide the necessary forms, and provide the services of a notary, where available, for completion of the petition.

Added by Acts 1997, No. 1156, §2; Acts 1999, No. 1200, §4; Acts 2001, No. 430, §1; Acts 2003, No. 750, §1; Acts 2004, No. 502, §1; Acts 2014, No. 355, §1.

**Art. 3604. Form, contents, and duration of restraining order**

A. A temporary restraining order shall be endorsed with the date and hour of issuance; shall be filed in the clerk's office and entered of record; shall state why the order was granted without notice and hearing; and shall expire by its terms within such time after entry, not to exceed ten days, as the court prescribes. A restraining order, for good cause shown, and at any time before its expiration, may be extended by the court for one or more periods not exceeding ten days each. The party against whom the order is directed may consent that it be extended for a longer period. The reasons for each extension shall be entered of record.



B. Nevertheless, in a suit for divorce, a temporary restraining order issued in conjunction with a rule to show cause for a preliminary injunction shall remain in force until a hearing is held on the rule for the preliminary injunction prohibiting a spouse from:

- (1) Disposing of or encumbering community property;
- (2) Harming the other spouse or a child; or
- (3) Removing a child from the jurisdiction of the court.

C.(1) A temporary restraining order issued in conjunction with a rule to show cause for a protective order filed in an action pursuant to the Protection from Family Violence Act, R.S. 46:2121 et seq., and pursuant to the Protection From Dating Violence Act, R.S. 46:2151, shall remain in force until a hearing is held on the rule for the protective order or for thirty days, whichever occurs first. If the initial rule to show cause is heard by a hearing officer, the temporary restraining order shall remain in force for fifteen days after the hearing or until the judge signs the protective order, whichever occurs last. At any time before the expiration of a temporary restraining order issued pursuant to this Paragraph, it may be extended by the court for a period not exceeding thirty days.

(2) In the event that the hearing on the rule for the protective order is continued by the court because of a declared state of emergency made in accordance with R.S. 29:724, any temporary restraining order issued in the matter shall remain in force for five days after the date of conclusion of the state of emergency. When a temporary restraining order remains in force under this Paragraph, the court shall reassign the rule for a protective order for hearing at the earliest possible time, but no later than five days after the date of conclusion of the state of emergency. The reassignment of the rule shall take precedence over all matters except older matters of the same character.

D. To be effective against a federally insured financial institution, a temporary restraining order or preliminary injunction issued in accordance with Subparagraph (B)(1) of this Article shall be served in accordance with the provisions of R.S. 6:285(C). A temporary restraining order or preliminary injunction granted pursuant to the provisions of this Article shall be effective only against accounts, safe deposit boxes, or other assets listed or held in the name of the following:

- (1) One or both of the spouses named in the injunction.
- (2) Another party or business entity specifically named in the injunction.

E. A federally insured financial institution shall not be liable for loss or damages resulting from its actions to comply with a temporary restraining order or preliminary injunction provided that the requirements of this Article have been met.

Acts 1983, No. 651, §1; Acts 1990, No. 361, §1, eff. Jan. 1, 1991; Acts 1999, No. 1336, §2; Acts 2003, No. 750, §1; Acts 2012, No. 582, §2; Acts 2014, No. 618, §1.

**Art. 3606. Temporary restraining order; hearing on preliminary injunction**

A. When a temporary restraining order is granted, the application for a preliminary injunction shall be assigned for hearing at the earliest possible time, subject to Article 3602, and shall take precedence over all matters except older matters of the same character. The party who obtains a temporary restraining order shall proceed with the application for a preliminary injunction when it comes on for hearing. Upon his failure to do so, the court shall dissolve the temporary restraining order.

B. In the event that the hearing on the issuance of a preliminary injunction is continued by the court because of a declared state of emergency made in accordance with R.S. 29:724, any temporary restraining order issued in the matter shall remain in force for five days after the conclusion of the state of emergency. When a temporary restraining order remains in force under this Paragraph, the court shall reassign the application for a preliminary injunction for hearing at the earliest possible time, but no later than five days after the conclusion of the state of emergency. The reassignment of the application shall take precedence over all matters except older matters of the same character.

Acts 2014, No. 618, §1.

**Art. 3607.1. Registry of temporary restraining order, preliminary injunction, or permanent injunction**

A. Immediately upon rendering a decision granting the petitioner a temporary restraining order or a preliminary or permanent injunction prohibiting a person from harming a family or household member or dating partner, or directing a person accused of stalking to refrain from abusing, harassing, or interfering with the victim of the stalking when the parties are strangers or acquaintances, the judge shall cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall sign such order, and shall immediately forward it to the clerk of court for filing on the day that the order is issued.

B. When a temporary restraining order, preliminary injunction, or permanent injunction relative to domestic abuse or dating violence or relative to stalking as provided for in Paragraph A of this Article, is issued, dissolved, or modified, the clerk of court shall transmit the Uniform Abuse Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court, for entry into the Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. The clerk of the issuing court shall also send a copy of the Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), or any modification thereof, to the chief law enforcement officer of the parish where the person or persons protected by the order reside by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer until otherwise directed by the court. Added by Acts 1997, No. 1156, §2; Acts 2003, No. 750, §1; Acts 2014, No. 317, §5; Acts 2014, No. 355, §1.

## **Louisiana Children's Code**

### **Art. 612. Assignment of reports for investigation and assessment**

A.(1) Upon receiving a report of abuse or neglect of a child who is not in the custody of the state, the local child protection unit of the department shall promptly assign a level of risk to the child based on the information provided by the reporter.

(2) Reports of high and intermediate levels of risk shall be investigated promptly. This investigation shall include a preliminary investigation as to the nature, extent, and cause of the abuse or neglect and the identity of the person actually responsible for the child's condition. This preliminary investigation shall include an interview with the child and his parent or parents or other caretaker and shall include consideration of all available medical information provided to the department pertaining to the child's condition. Such preliminary investigation shall also include an immediate assessment of any existing visitation or custody order or agreement involving the alleged perpetrator and the child. The department shall request a temporary restraining order pursuant to Article 617, a protective order pursuant to Article 618, or an instanter safety plan order pursuant to Article 619 or Article 620 if the department determines that any such previously ordered visitation or custody would put the child's health and safety at risk. Admission of the investigator on school premises or access to the child in school shall not be denied by school personnel. However, the request for a temporary restraining order or a protective order in accordance with this Article shall not independently confer exclusive jurisdiction on the juvenile court in accordance with Article 303.

(3) In lieu of an investigation, reports of low levels of risk may be assessed promptly through interviews with the family to identify needs and available match to community resources. If during this assessment, it is determined that a child is at immediate substantial risk of harm, the local child protection unit shall promptly conduct or participate in an intensive investigation.

(4) During the investigation of a report from a treating health care practitioner of physical abuse of a child who is not in custody of the state, at the request and expense of the child's parent or caregiver the department shall provide copies of all medical information pertaining to the child's condition or treatment obtained during the investigation to a board certified child abuse pediatrician for purposes of conducting an independent review of the information. Any resulting report shall be provided to the department and to the child's parent or caretaker and shall be utilized in the department's on-going assessment of risk and to determine what action may be necessary to protect the health and safety of the child. Nothing in this Subparagraph shall be construed to prohibit granting an instanter removal order pursuant to Children's Code Article 615(B).

B. All persons, including without limitation mandatory and permissive reporters, shall cooperate fully with investigative procedures, including independent investigations and psychological evaluations of the child initiated by the parent on behalf of the child. The provisions of this Paragraph shall not require the disclosure of any communications between an attorney and his client or any confession or other sacred

communication between priest, rabbi, duly ordained minister, or Christian Science practitioner and his communicant.

C. All interviews of the child or his parents conducted in the course of a child protective investigation shall be tape-recorded, if requested by the parent or parents.

D. Upon determination that there is reason to believe that the child has been abused or neglected, the local child protection unit shall conduct a more intensive investigation. If necessary, the investigator may apply for an evaluation order authorized by Article 614.

E. When the report concerns a facility under the supervision of the department, the secretary of the department may assign the duties and powers enumerated herein to any office within the department to carry out the purposes of this Chapter or may enter into cooperative agreements with other state agencies to conduct investigations in accordance with this Article.

F. Violation of the duties imposed by this Article subjects the offender to criminal prosecution authorized by R.S. 14:403(A)(2).

G. The Department of Children and Family Services shall set priorities for case response and allocate staff resources to cases identified by reporters as presenting immediate substantial risk of harm to children. Absent evidence of willful or intentional misconduct or gross negligence in carrying out the investigative functions of the state child protection program, caseworkers, supervisors, program managers, and agency heads shall be immune from civil and criminal liability in any legal action arising from the department's decisions made relative to the setting of priorities for cases and targeting of staff resources.

Acts 1991, No. 235, §6, eff. Jan. 1, 1992; Acts 1992, No. 705, §1, eff. July 6, 1992; Acts 1993, No. 675, §1; Acts 1995, No. 444 §1, eff. June 17, 1995; Acts 1999, No. 1355, §1, eff. July 12, 1999; Acts 2011, No. 189, §1; Acts 2013, No. 225, §1; Acts 2014, No. 486, §1.

#### **Art. 1004. Petition for termination of parental rights; authorization to file**

A. At any time, including in any hearing in a child in need of care proceeding, the court on its own motion may order the filing of a petition on any ground authorized by Article 1015.

B. Counsel appointed for the child pursuant to Article 607 may petition for the termination of parental rights of the parent of the child if the petition alleges a ground authorized by Article 1015(4), (5), or (6) and, although eighteen months have elapsed since the date of the child's adjudication as a child in need of care, no petition has been filed by the district attorney or the department.

C. The district attorney may petition for the termination of parental rights of the parent of the child on any ground authorized by Article 1015.

D. The department may petition for the termination of parental rights of the parent of the child when any of the following apply:

(1) The child has been subjected to abuse or neglect after the child is returned to the parent's care and custody while under department supervision, and termination is authorized by Article 1015(3)(j).

(2) The parent's parental rights to one or more of the child's siblings have been terminated due to neglect or abuse and prior attempts to rehabilitate the parent have been unsuccessful, and termination is authorized by Article 1015(3)(k).

(3) The child has been abandoned and termination is authorized by Article 1015(4).

(4) The child has been placed in the custody of the state and termination is authorized by Article 1015(5).

(5) The child is in foster care because the parent is incarcerated and termination is authorized by Article 1015(6).

E. When termination is authorized by Article 1015, other than on the grounds specified by Paragraph D of this Article, by special appointment, the district attorney may designate counsel for the department as a special assistant authorized to act in his stead in all such termination actions or in a particular case.

F. By special appointment for a particular case, the court or the district attorney may designate private counsel authorized to petition for the termination of parental rights of the parent of the child on the ground of abandonment authorized by Article 1015(4).

G. Foster parents who intend to adopt the child may petition for the termination of parental rights of the foster child's parents when, in accordance with Article 702(D), adoption is the permanent plan for the child, the child has been in state custody under the foster parent's care for seventeen of the last twenty-two months, and the department has failed to petition for such termination.

H. When termination is authorized by Article 1015(1) or (2) and no petition is filed to terminate the parental rights of the surviving parent pursuant to Paragraph A, C, or E of this Article after a written request to file such action is made to the district attorney by any interested person and no petition is filed within sixty days by the district attorney, that person may file suit to terminate the parental rights of the surviving parent.

Acts 1991, No. 235, §10, eff. Jan. 1, 1992; Acts 1992, No. 705, §1, eff. July 6, 1992; Acts 1997, No. 256, §1; Acts 1999, No. 449, §1, eff. July 1, 1999; Acts 1999, No. 1067, §1; Acts 2001, No. 567, §1; Acts 2005, No. 80, §1.

## **Domestic Abuse Assistance Act**

### **Art. 1564. Purpose**

The purpose of this Chapter is to recognize and address the complex legal and social problems created by domestic violence and to provide a civil remedy in the juvenile courts for domestic violence in homes in which children reside which will afford the victim immediate and easily accessible protection.

Acts 1991, No. 235, §15, eff. Jan. 1, 1992.

### **Art. 1565. Definitions**

As used in this Chapter:

(1) "Domestic abuse" includes but is not limited to physical or sexual abuse and any offense against the person as defined in Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950, except negligent injury and defamation, committed by one family or household member against another.

(2) "Family or household member" means spouses, former spouses, parents and children, stepparents, stepchildren, foster parents, foster children, and any person living in the same residence with the defendant as a spouse whether married or not if a child or children also live in the residence, who are seeking protection under this Chapter.

Acts 1991, No. 235, §15, eff. Jan. 1, 1992; Acts 1997, No. 1156, §1

### **Art. 1566. Assistance; clerk of court; domestic abuse advocate**

A. The clerk of court shall make forms available for making application for protective orders under this Chapter, provide clerical assistance to the petitioner when necessary, advise indigent applicants of the availability of filing in forma pauperis, provide the necessary forms, and provide the services of a notary, where available, for completion of the affidavit required in Article 1568. The forms shall be prepared by the Judicial Administrator's Office, Louisiana Supreme Court.

B. Domestic abuse advocates may provide clerical assistance to petitioners in making an application for a protective order in accordance with this Chapter.

C. For purposes of this Article, "domestic abuse advocate" means an employee or representative of a community based shelter providing services to victims of family violence or domestic abuse.

Acts 1991, No. 235, §15, eff. Jan. 1, 1992; Acts 1997, No. 1156, §1; Acts 2011, No. 234, §2

### **Art. 1567. Venue; standing**

A. Venue lies in either:

- (1) The parish in which the marital domicile is located or in which the household is located.
- (2) The parish in which the defendant resides.
- (3) The parish in which the abuse is alleged to have been committed.
- (4) For purposes of issuing an order pursuant to Article 1569(A)(1) only, the parish in which the petitioner resides.
- (5) The parish in which an action for an annulment of marriage or for a divorce could be brought pursuant to the Code of Civil Procedure.

B. An adult may seek relief under this Chapter by filing a petition with the court alleging abuse by the defendant. Any parent, adult household member, local child protection unit of the Department of Children and Family Services, or district attorney may seek relief on behalf of any child or any person alleged to be incompetent by filing a petition with the court alleging abuse by the defendant. A petitioner's right to relief under this Chapter shall not be affected by his leaving the residence or household to avoid further abuse.

Acts 1991, No. 235, §15, eff. Jan. 1, 1992; Acts 1995, No. 1095, §8; Acts 1997, No. 1156, §1.

#### **Art. 1568. Petition**

A. A petition filed under the provisions of this Chapter shall contain the following:

- (1) The name of each petitioner and each person on whose behalf the petition is filed and the name, address, and parish of residence of each individual alleged to have committed abuse, if known.
- (2) If the petition is being filed on behalf of a child or person alleged to be incompetent, the relationship between that person and the petitioner.
- (3) The facts and circumstances concerning the alleged abuse.
- (4) The relationship between each petitioner and each individual alleged to have committed abuse.
- (5) A request for one or more protective orders or a temporary restraining order.

B. The address and parish of residence of each petitioner and each person on whose behalf the petition is filed may remain confidential with the court.

C. If the petition requests a protective order for a spouse and alleges that the other spouse has committed abuse, the petition shall state whether a suit for divorce is pending.

D. If the petition requests the issuance of an ex parte temporary restraining order, the petition shall contain an affidavit signed by each petitioner that the facts and circumstances contained in the petition are true and correct to the best knowledge, information, and belief of the petitioner. Any false statement under oath contained in the affidavit shall constitute perjury and shall be punishable by a fine of not more than one thousand dollars or by imprisonment with or without hard labor for not more than five years, or both.

E. If a suit for divorce is pending, any application for a protective order shall be filed in that proceeding and shall be heard within the delays provided by this Chapter. Any decree issued in a divorce proceeding filed subsequent to the filing of a petition or an order issued pursuant to this Chapter may, in the discretion of the court hearing the divorce proceeding, supersede in whole or in part the orders issued pursuant to this Chapter. Such subsequent decree shall be forwarded by the rendering court to the court having jurisdiction of the petition for a protective order and shall be made a part of the record thereof. The findings and rulings made in connection with such protective orders shall not be res judicata in any subsequent proceeding.

Acts 1991, No. 235, §15, eff. Jan. 1, 1992; Acts 1997, No. 1156, §1.

#### **Art. 1569. 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 children, or any person alleged to be an incompetent. Immediate and present danger of abuse shall constitute good cause for purposes of this Article. The order may include but is not limited to the following:

(1)(a) Directing the defendant to refrain from abusing, harassing, or interfering with the person or employment or going near the residence or place of employment of the petitioner, the children, or any person alleged to be incompetent, on whose behalf a petition was filed under this Chapter.

(b) Directing the defendant to refrain from activities associated with a coerced abortion as defined in Article 603.

(2) Awarding to a party the use and possession of specified community property, such as an automobile.

(3) Granting possession to the petitioner of the residence or household to the exclusion of the defendant, by evicting the defendant or restoring possession to the petitioner when either:

(a) The residence is jointly owned in equal proportion or leased by the defendant and the petitioner or the person on whose behalf the petition is brought.

(b) The residence is solely owned by the petitioner or the person on whose behalf the petition is brought.



(c) The residence is solely leased by defendant and defendant has a duty to support the petitioner or the person on whose behalf the petition is brought.

(4) Prohibiting either party from the transferring, encumbering, or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business, or for the necessary support of the party or the minor children.

(5) Awarding temporary custody of children or persons alleged to be incompetent.

(6) Awarding or restoring possession to the petitioner of all separate property and all personal property, including but not limited to telephones or other communication equipment, computer, medications, clothing, toiletries, social security cards, birth certificates or other forms of identification, tools of the trade, checkbook, keys, automobile, photographs, jewelry, or any other items or personal effects of the petitioner and restraining the defendant from transferring, encumbering, concealing, or disposing of the personal or separate property of the petitioner.

(7) Granting to the petitioner the exclusive care, possession, or control of any pets belonging to or under the care of the petitioner or minor children residing in the residence or household of either party, and directing the defendant to refrain from harassing, interfering with, abusing or injuring any pet, without legal justification, known to be owned, possessed, leased, kept, or held by either party or a minor child residing in the residence or household of either party.

B. If a temporary restraining order is granted without notice, the matter shall be set within twenty-one days for a rule to show cause why the protective order should not be issued, at which time the petitioner must prove the allegations of abuse by a preponderance of the evidence. The defendant shall be given notice of the temporary restraining order and the hearing on the rule to show cause by service of process as required by law.

C. During the existence of the temporary restraining order, a party shall have the right to return to the family residence once to recover his or her personal clothing and necessities, provided that the party is accompanied by a law enforcement officer to insure the protection and safety of the parties.

D. If no temporary restraining order has been granted, the court shall issue a rule to show cause why the protective order should not be issued, and set the rule for hearing on the earliest day that the business of the court will permit, but in any case within ten days from the date of service of the petition, at which time the petitioner must prove the allegations of abuse by a preponderance of the evidence. The defendant shall be given notice by service of process as required by law.

E. If the hearing pursuant to Paragraph B or D of this Article is continued, the court shall make or extend such temporary restraining order as it deems necessary. Any continuance of a hearing ordered pursuant to Paragraph B or D of this Article shall not exceed fifteen days, unless good cause is shown for further continuance.

F. The court may, in its discretion, grant an emergency temporary restraining order outside regular court hours.

G. Repealed by Acts 1999, No. 1200, §5.

H. Immediately upon rendering a decision granting the relief requested by the petitioner, the judge shall cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall sign such order, and shall immediately forward it to the clerk of court for filing on the day that the order is issued.

I. If a temporary restraining order is issued or extended, the clerk of the issuing court shall transmit the Uniform Abuse Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court, for entry into the Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. The clerk of the issuing court shall also send a copy of the Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), or any modification thereof, to the chief law enforcement officer of the parish where the person or persons protected by the order reside by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer until otherwise directed by the court.

Acts 1991, No. 235, §15, eff. Jan. 1, 1992; Acts 1997, No. 1156, §1; Acts 1999, No. 1200, §§3, 5; Acts 2006, No. 777, §1; Acts 2008, No. 411, §2, eff. June 21, 2008; Acts 2009, No. 427, §2; Acts 2013, No. 260, §1; Acts 2014, No. 317, §4.

#### **Art. 1570. Protective orders; content; modification; service**

A. The court may grant any protective order or approve any consent agreement to bring about a cessation of abuse of a party, any children, or any person alleged to be incompetent, which relief may include but is not limited to:

(1) Granting the relief enumerated in Article 1569.

(2) When there is a duty to support a party, any minor children, or any person alleged to be incompetent living in the residence or household, ordering payment of temporary support or provision of suitable housing for them.

(3) Awarding temporary custody of or establishing temporary visitation rights and conditions with regard to any children or person alleged to be incompetent.

(4) Ordering counseling or professional medical treatment for the defendant or the abused person, or both.

(5)(a) Ordering a medical evaluation of the defendant or the abused person, or both, to be conducted by an independent court-appointed evaluator who qualifies as an expert in the field of domestic abuse.

The evaluation shall be conducted by a person who has no family, financial, or prior medical relationship with the defendant or abused person, or their attorneys of record.

(b) If the medical evaluation is ordered for both the defendant and abused person, two separate evaluators shall be appointed.

(c) After an independent medical evaluation has been completed and a report issued, the court may order counseling or other medical treatment as deemed appropriate.

B. A protective order may be rendered pursuant to this Chapter if the court has jurisdiction over the parties and subject matter and either of the following occurs:

(1) The parties enter into a consent agreement.

(2) Reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process.

C. Any protective order issued within this state or outside this state that is consistent with Paragraph B shall be accorded full faith and credit by the courts of this state and enforced as if it were the order of the enforcing court.

D. On the motion of any party, the court, after notice to the other parties and a hearing, may modify a prior order to exclude any item included in the prior order or to include any item that could have been included in the prior order.

E. A protective order made under this Chapter shall be served on the person to whom the order applied in open court at the close of the hearing, or in the same manner as a writ of injunction.

F. Any final protective order or approved consent agreement shall be for a fixed period of time, not to exceed six months, and may be extended by the court, after a contradictory hearing, in its discretion. When such order or agreement is for the protection of a child under the age of eighteen who has been sexually molested, the period shall last at least until the child attains the age of eighteen years, unless otherwise modified or terminated following a contradictory hearing. Such protective order or extension thereof shall be subject to a devolutive appeal only.

G. Immediately upon rendering a decision granting the relief requested by the petitioner, the judge shall cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall sign such order, and shall immediately forward it to the clerk of court for filing on the day that the order is issued.

H. If a protective order is issued or modified, or a consent agreement is agreed to or modified, the clerk of the issuing court shall transmit the Uniform Abuse Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court, for entry into the Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. The clerk of

the issuing court shall also send a copy of the Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), or any modification thereof, to the chief law enforcement officer of the parish where the person or persons protected by the order reside by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer until otherwise directed by the court.

I. A court shall not grant a mutual order for protection to opposing parties. However, nothing contained in this Paragraph shall be construed to prohibit the court from granting a protective order to a party in a subsequently filed Petition for Domestic Abuse Assistance provided that the provisions contained in R.S. 46:2136(B) have been met.

Acts 1991, No. 235, §15, eff. Jan. 1, 1992; Acts 1994, 3rd Ex. Sess., No. 22, §1; Acts 1997, No. 1156, §1; Acts 1999, No. 541, §1; Acts 1999, No. 1200, §3; Acts 2008, No. 411, §2, eff. June 21, 2008; Acts 2014, No. 317, §4.

## **Louisiana Revised Statutes**

### **9:327. Determination of domestic abuse for spousal support**

A. In awarding final spousal support pursuant to Civil Code Article 112(B), the court shall consider any criminal conviction of the obligor spouse for an offense committed against the claimant spouse during the course of the marriage.

B. In the absence of a criminal conviction, the court may order an evaluation of both parties that may be used to assist the court in determining the existence and nature of the alleged domestic abuse. The evaluation shall be conducted by an independent court-appointed mental health professional who is an expert in the field of domestic abuse. The mental health professional shall have no family, financial, or prior medical relationship with either party or their attorneys of record. The mental health professional shall provide the court and the parties with a written report of his findings.

Acts 2014, No. 316, §2.

## **PART IV. POST-SEPARATION FAMILY VIOLENCE RELIEF ACT**

### **9:361. Legislative findings**

The legislature hereby reiterates its previous findings and statements of purpose set forth in R.S. 46:2121 and 2131 relative to family violence and domestic violence. The legislature further finds that the problems of family violence do not necessarily cease when the victimized family is legally separated or divorced. In fact, the violence often escalates, and child custody and visitation become the new forum for the continuation of the abuse. Because current laws relative to child custody and visitation are based on an assumption that even divorcing parents are in relatively equal positions of power, and that such parents act in the children's best interest, these laws often work against the protection of the children and the abused spouse in families with a history of family violence. Consequently, laws designed to act in the children's best interest may actually effect a contrary result due to the unique dynamics of family violence.

Acts 1992, No. 1091, §1.

### **9:362. Definitions**

As used in this Part:

(1) "Abused parent" means the parent who has not committed family violence.

(2) "Court" means any district court, juvenile court, or family court having jurisdiction over the parents and/or child at issue.

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

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

(b) Experience in facilitating batterer intervention groups.

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

(4) "Family violence" includes but is not limited to physical or sexual abuse and any offense against the person as defined in the Criminal Code of Louisiana, except negligent injuring and defamation, committed by one parent against the other parent or against any of the children. Family violence does not include reasonable acts of self-defense utilized by one parent to protect himself or herself or a child in the family from the family violence of the other parent.

(5) "Injunction" means a temporary restraining order or a preliminary or a permanent court ordered injunction, as defined in the Code of Civil Procedure, which prohibits the violent parent from in any way contacting the abused parent or the children except for specific purposes set forth in the injunction, which shall be limited to communications expressly dealing with the education, health, and welfare of the children, or for any other purpose expressly agreed to by the abused parent. All such injunctions shall prohibit the violent parent, without the express consent of the abused parent, from intentionally going within fifty yards of the home, school, place of employment, or person of the abused parent and the children, or within fifty feet of any of their automobiles, except as may otherwise be necessary for court ordered visitation or except as otherwise necessitated by circumstances considering the proximity of the parties' residences or places of employment. Such injunctions shall be issued in the form of a Uniform Abuse Prevention Order and transmitted to the Louisiana Protective Order Registry, as required by this Part.

(6) "Sexual abuse" includes but is not limited to acts which are prohibited by R.S. 14:41, 42, 42.1, 43, 43.1, 43.2, 43.4, 78, 80, 81, 81.1, 81.2, 89 and 89.1.

(7) "Supervised visitation" means face-to-face contact between a parent and a child which occurs in the immediate presence of a supervising person approved by the court under conditions which prevent any physical abuse, threats, intimidation, abduction, or humiliation of either the abused parent or the child. The supervising person shall not be any relative, friend, therapist, or associate of the parent perpetrating family violence. With the consent of the abused parent, the supervising person may be a family member or friend of the abused parent. At the request of the abused parent, the court may order that the supervising person shall be a police officer or other competent professional. The parent

who perpetrated family violence shall pay any and all costs incurred in the supervision of visitation. In no case shall supervised visitation be overnight or in the home of the violent parent.

Acts 1992, No. 1091, §1; Acts 1995, No. 888, §1; Acts 1997, No. 1156, §4; Acts 2014, No. 194, §1; Acts 2014, No. 333, §1.

#### **9:363. Ordered mediation prohibited**

Notwithstanding any other provision of law to the contrary, in any separation, divorce, child custody, visitation, child support, alimony, or community property proceeding, no spouse or parent who satisfies the court that he or she, or any of the children, has been the victim of family violence perpetrated by the other spouse or parent shall be court ordered to participate in mediation.

Acts 1992, No. 1091, §1.

#### **9:364. Child custody; visitation**

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

B. If the court finds that both parents have a history of perpetrating family violence, custody shall be awarded solely to the parent who is less likely to continue to perpetrate family violence. In such a case, the court shall mandate completion of a court-monitored domestic abuse intervention program by the custodial parent. If necessary to protect the welfare of the child, custody may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court.

C. If the court finds that a parent has a history of perpetrating family violence, the court shall allow only supervised child visitation with that parent, conditioned upon that parent's participation in and completion of a court-monitored domestic abuse intervention program. Unsupervised visitation shall be allowed only if it is shown by a preponderance of the evidence that the violent parent has completed a

treatment program, is not abusing alcohol and psychoactive drugs, and poses no danger to the child, and that such visitation is in the child's best interest.

D. If any court finds, by clear and convincing evidence, that a parent has sexually abused his or her child or children, the court shall prohibit all visitation and contact between the abusive parent and the children, until such time, following a contradictory hearing, that the court finds, by a preponderance of the evidence, that the abusive parent has successfully completed a treatment program designed for such sexual abusers, and that supervised visitation is in the children's best interest.

Acts 1992, No. 1091, §1; Acts 1995, No. 888, §1; Acts 2014, No. 194, §1.

#### **9:365. Qualification of mental health professional**

Any mental health professional appointed by the court to conduct a custody evaluation in a case where family violence is an issue shall have current and demonstrable training and experience working with perpetrators and victims of family violence.

Acts 1992, No. 1091, §1.

#### **9:366. Injunctions**

A. All separation, divorce, child custody, and child visitation orders and judgments in family violence cases shall contain an injunction as defined in R.S. 9:362. Upon issuance of such injunction, the judge shall cause to have prepared a Uniform Abuse Prevention Order as provided in R.S. 46:2136.2(C), shall sign such order, and shall immediately forward it to the clerk of court for filing on the day that the order is issued. The clerk of the issuing court shall transmit the Uniform Abuse Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court, for entry into the Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. The clerk of the issuing court shall also send a copy of the Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), or any modification thereof, to the chief law enforcement officer of the parish where the person or persons protected by the order reside by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer until otherwise directed by the court.

B. Any violation of the injunction, if proved by the appropriate standard, shall be punished as contempt of court, and shall result in a termination of all court-ordered child visitation.

Acts 1992, No. 1091, §1; Acts 1995, No. 888, §1; Acts 2003, No. 750, §3; Acts 2014, No. 317, §1.



## **9:367 Costs**

In any family violence case, all court costs, attorney fees, evaluation fees, and expert witness fees incurred in furtherance of this Part shall be paid by the perpetrator of the family violence, including all costs of medical and psychological care for the abused spouse, or for any of the children, necessitated by the family violence.

Acts 1992, No. 1091, §1.

### **R.S. 9:3261.1. Lease agreements for certain residential dwellings; domestic abuse victims**

A. This Section shall apply only to a lease agreement for a residential dwelling within a building or structure consisting of six or more separate residential dwellings. The provisions of this Section shall not apply when the structure consists of ten or fewer units and one of the units is occupied by the owner or lessor.

#### **B. Definitions**

(1) "Domestic abuse" means domestic abuse battery as defined in R.S. 14:35.3 provided that the domestic abuse was committed on the leased premises.

(2) "Household member" means a household member as defined in R.S. 14:35.3.

(3) "Reasonable documentation" shall be exclusively confined to mean any of the following documents:

(a) A completed Certification of Domestic Abuse form as set forth in this Section, signed under oath by a qualified third party as defined in this Section.

(b) A Uniform Abuse Prevention Order.

(4) "Qualified third party" means the executive director, program director, or another employee of a community-based shelter contracted with the Department of Children and Family Services pursuant to R.S. 46:2124, provided the employee is a Licensed Clinical Social Worker (LCSW) or possesses a masters degree in Social Work (MSW).

(5) "Domestic abuse offender" means a lessee or household member who has been named as a defendant in a Uniform Abuse Prevention Order or has been identified as a perpetrator of domestic abuse in a Certification of Domestic Abuse.

(6) "Domestic abuse victim" means a lessee or household member who has been named as a petitioner in a Uniform Abuse Prevention Order or has completed a Certification of Domestic Abuse.

7) "Accommodation" means the granting by the lessor to a domestic abuse victim the right to execute, renew, or terminate a lease, as applicable under the circumstances, pursuant to the requirements of this Section.

C.(1) No lease agreement shall:

(a) Limit the lessee's right to summon, or any other person's right to summon, a law enforcement officer or other emergency assistance in response to an emergency or following an incident of domestic abuse on the leased premises.

(b) Assess monetary penalties or other penalties under the lease for the lessee summoning, or for any other person summoning, a law enforcement officer or other emergency assistance in response to an emergency or following an incident of domestic abuse on the leased premises.

(2) A lease provision prohibited under this Subsection shall be null, void, and unenforceable.

D.(1) A lessor shall not:

a) Refuse to enter into the lease agreement solely on the basis that an applicant, or that applicant's household member, is or has been a victim of domestic abuse, or, except as provided by Subparagraph (b) of this Paragraph, on the basis of activity directly related to domestic abuse, if that applicant provides reasonable documentation and otherwise qualifies to enter into a lease agreement. The provisions of this Subparagraph shall not apply to an applicant who has previously been evicted by the lessor for any reason.

(b) Terminate the lease agreement, fail to renew the lease agreement, or issue an eviction notice or notice to vacate on the basis that an act of domestic abuse or activity directly related to domestic abuse has occurred on the leased premises and the victim is a lessee or a lessee's household member. However, if the continued presence of a domestic abuse offender in, or in close proximity to, the lessee's residential dwelling or apartment results in one or more additional violent disturbances or altercations and those disturbances or altercations pose a threat to the safety or peaceable possession of the premises by the lessee or other residents, then the lessor may evict the lessee, even if the presence of the domestic abuse offender is uninvited or unwelcome by the lessee. In such evictions, at the lessor's sole discretion, the lessor may permit the lessee to relocate to a different residential dwelling or apartment, provided that another residential dwelling or apartment is available and the lessee otherwise meets the lessor's qualification standards.

(2) An applicant, lessee, or any household member of an applicant or lessee who is or was the victim of domestic abuse, and who seeks protection under this Section, shall produce to the lessor reasonable documentation of the domestic abuse on or before the date of the lease application, lease termination, lease nonrenewal, or before the judgment or order of eviction is rendered. Failure of the applicant, lessee, or household member of any applicant or lessee to timely produce such reasonable documentation shall preclude and act as a complete bar to that applicant, lessee, or household member asserting claims or causes of action against the lessor for violation of this Subsection.

(3)(a) A lessor who has not yet been given reasonable documentation of the abuse by the lessee and who issues an eviction notice or a notice to vacate to any lessee for any reason allowed under an

existing lease agreement, including damage to leased premises, shall not be penalized under this Section.

(b) However, if the sole reason the eviction notice or notice to vacate was issued was a single act of domestic abuse and not an additional act of domestic abuse under Paragraph (D)(1), no breach of the lease has been alleged, and the lessor receives reasonable documentation of domestic abuse before the judgment or order of eviction is rendered, then the lessor shall rescind the eviction notice or notice to vacate.

E. Only a lessee or a household member of the lessee's residential dwelling unit may be considered a domestic abuse victim such that the lessee may request an accommodation under this Section. In order for a lessee to receive an early termination as provided in this Section, the lessee shall do all of the following:

- (1) Assert in writing to the lessor that the lessee, or the lessee's household member, is a domestic abuse victim and that the lessee seeks the particular accommodation afforded under Subsection F of this Section.
- (2) Provide to the lessor reasonable documentation that the lessee seeking an accommodation, or that lessee's household member, was a victim of an act of domestic abuse on the leased premises within the past thirty days.
- (3) Assert in writing that the lessee seeking the accommodation will not knowingly voluntarily permit the domestic abuse offender further access to, visitation on, or occupancy of the lessee's residential dwelling unit and acknowledging that any violation of this Section may result in eviction or termination of the lease.
- (4) Otherwise meet or agree to fulfill all requirements of a lessee under the lease agreement.
- (5) If requested by the lessor, provide in writing the name and address of the person named as the defendant, perpetrator or abuser in a Uniform Abuse Prevention Order or Certification of Domestic Abuse form.

F. If a lessee fulfills all of the requirements of Subsection E of this Section, the lessor shall grant the lessee the requested early termination of the lease, as provided by this Subsection:

- (1) If the lessee requests early termination of the lease agreement, the lessor shall terminate the lease agreement as a matter of law on a mutually agreed-upon date within thirty days of the written request for accommodation. The lessee requesting the accommodation shall vacate the residential dwelling by that date to avoid liability for future rent.
- (2) In such cases, the lessee requesting the accommodation is liable only for rent paid through the early termination date of the lease and any previous obligations to the lessor outstanding on that date. The amount due from the lessee shall be paid to the lessor on or before the date the lessee vacates the

dwelling. The lessor may withhold the lessee's security deposit only for any reason permitted under R.S. 9:3251. If the lessee or an additional lessee is a domestic abuse offender named on reasonable documentation presented to the lessor in a lessee's request for an accommodation under this Section, the lessor shall be entitled to an immediate eviction of the domestic abuse offender upon presenting the court with reasonable documentation of the abuse.

(3) When there are multiple lessees who are parties to a lease agreement for which the accommodation of early termination is requested by one or more lessees, and upon the lessee's timely providing to the lessor reasonable documentation of the abuse as required in this Section, the entire lease shall terminate on the mutually agreed-upon date, and the lessor shall be entitled to an immediate eviction of all lessees upon presenting the court with reasonable documentation of the abuse.

G. Nothing in this Section shall be construed to limit a lessor's right to refuse to enter into a lease agreement, terminate a lease agreement, fail to renew a lease agreement, or issue an eviction notice or notice to vacate to a lessee or tenants pursuant to Code of Civil Procedure Article 4701, et seq., for actions unrelated to the act of domestic abuse. Further, a lessor shall be entitled to an immediate eviction of the domestic abuse offender upon presenting the court with reasonable documentation of the abuse, and nothing in this Section shall limit a lessee's obligation as required by a lease agreement between the lessor and lessee.

H. A Certification of Domestic Abuse form as provided for in this Section shall read substantially the same as follows:

(Name of qualified third party and, if applicable, the name of their shelter, office or agency)

I and/or my (family or household member) have suffered domestic abuse as defined in R.S. 9:3261.1.

Briefly describe the incident giving rise to the claim of domestic abuse:

The incident(s) that I rely on in support of this declaration occurred on the following date(s) and time(s):  
and at the following location(s): .

The incident(s) that I rely on in support of this declaration was/were committed by the following person(s), if known: .

I state under penalty of perjury under the laws of the state of Louisiana that the foregoing is true and correct. By submitting this statement I do not waive any legally recognized privilege protecting any communications that I may have with the agency or representative whose name appears below or with any other person or entity. I understand that my obligation to pay rent does not end until the early termination date of my lease as decided by the lessor or until I vacate the premises upon receiving agreement by the lessor to terminate my obligations under the lease early. I understand that my lessor may keep my security deposit or other amounts as permitted under law.

Dated at , Louisiana, this day of 20 .

(Signature of Lessee or Lessee's family or household member)

PRINTED NAME

I verify under penalty of perjury under the laws of the state of Louisiana

that I have provided services to the person whose signature appears above and that, based on information communicated to me by the person whose signature appears above, the individual or his or her family or household member has suffered domestic abuse as defined by R.S. 9:3261.1, and that the individual informed me of the name of the alleged perpetrator of the actions, giving rise to the claim, if known. This verification does not waive any legally recognized privilege that I, my agency, or any of its representatives have with the person whose signature appears above.

Dated this       day of , 20       .

(Signature of qualified third party)

PRINTED NAME

(License number or organizational tax identification number)

(Organization name)

(Printed address)

I. A civil action for enforcement of rights granted pursuant to this Section may be commenced in state district court by a domestic abuse victim within one year of an alleged violation of this Section. In the civil action, the court may only grant as relief any permanent or temporary injunction, temporary restraining order, or other similar order, as the court deems appropriate.

J. Upon motion of the defendant or upon the court's own motion, if the court determines that a civil action brought under this Section is frivolous, the court shall award appropriate sanctions pursuant to Code of Civil Procedure Article 863.

K. No civil action may be commenced under this Section if the plaintiff or the plaintiff's household member has knowingly voluntarily permitted the domestic abuse offender access to, visitation on, or occupancy of the lessee's residential dwelling unit at any time after having requested an accommodation from the lessor under this Section.

L. Notwithstanding 24 Code of Federal Regulations Part 5.2011 and any other provision of law to the contrary, the provisions of this Section shall not supersede 24 CFR Part 5 Subpart L, as amended from time to time, including the programs provided for in 24 CFR Part 5.2009.

M. Lessors or owners of residential dwellings who institute eviction proceedings against domestic abuse offenders under this Section shall be immune from any and all lawsuits, claims, demands, or causes of action filed by or on behalf of domestic abuse offenders for wrongful eviction, breach of

contract, termination of the lease in violation of this Section, discrimination under state or federal law, or any other claims or causes of actions arising in any way out of the eviction.

## **R.S. 14:2. Definitions**

A. In this Code the terms enumerated shall have the designated meanings:

(1) "Another" refers to any other person or legal entity, including the state of Louisiana or any subdivision thereof.

(2) "Anything of value" must be given the broadest possible construction, including any conceivable thing of the slightest value, movable or immovable, corporeal or incorporeal, public or private, and including transportation, telephone and telegraph services, or any other service available for hire. It must be construed in the broad popular sense of the phrase, not necessarily as synonymous with the traditional legal term "property." In all cases involving shoplifting the term "value" is the actual retail price of the property at the time of the offense.

(3) "Dangerous weapon" includes any gas, liquid or other substance or instrumentality, which, in the manner used, is calculated or likely to produce death or great bodily harm.

(4) "Felony" is any crime for which an offender may be sentenced to death or imprisonment at hard labor.

(5) "Foreseeable" refers to that which ordinarily would be anticipated by a human being of average reasonable intelligence and perception.

(6) "Misdemeanor" is any crime other than a felony.

(7) "Person" includes a human being from the moment of fertilization and implantation and also includes a body of persons, whether incorporated or not.

(8) "Property" refers to both public and private property, movable and immovable, and corporeal and incorporeal property.

(9) "Public officer", "public office", "public employee", or "position of public authority" means and applies to any executive, ministerial, administrative, judicial, or legislative officer, office, employee or position of authority respectively, of the state of Louisiana or any parish, municipality, district, or other political subdivision thereof, or of any agency, board, commission, department, or institution of said state, parish, municipality, district, or other political subdivision.

(10) "State" means the state of Louisiana, or any parish, municipality, district, or other political subdivision thereof, or any agency, board, commission, department, or institution of said state, parish, municipality, district, or other political subdivision.

(11) "Unborn child" means any individual of the human species from fertilization and implantation until birth.

(12) "Whoever" in a penalty clause refers only to natural persons insofar as death or imprisonment is provided, but insofar as a fine may be imposed "whoever" in a penalty clause refers to any person.

B. In this Code, "crime of violence" means an offense that has, as an element, the use, attempted use, or threatened use of physical force against the person or property of another, and that, by its very nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense or an offense that involves the possession or use of a dangerous weapon. The following enumerated offenses and attempts to commit any of them are included as "crimes of violence":

- (1) Solicitation for murder.
- (2) First degree murder.
- (3) Second degree murder.
- (4) Manslaughter.
- (5) Aggravated battery.
- (6) Second degree battery.
- (7) Aggravated assault.
- (8) Mingling harmful substances.
- (9) Aggravated or first degree rape.
- (10) Forcible or second degree rape.
- (11) Simple or third degree rape.
- (12) Sexual battery.
- (13) Second degree sexual battery.
- (14) Intentional exposure to AIDS virus.
- (15) Aggravated kidnapping.
- (16) Second degree kidnapping.
- (17) Simple kidnapping.
- (18) Aggravated arson.

- (19) Aggravated criminal damage to property.
- (20) Aggravated burglary.
- (21) Armed robbery.
- (22) First degree robbery.
- (23) Simple robbery.
- (24) Purse snatching.
- (25) Extortion.
- (26) Assault by drive-by shooting.
- (27) Aggravated crime against nature.
- (28) Carjacking.
- (29) Illegal use of weapons or dangerous instrumentalities.
- (30) Terrorism.
- (31) Aggravated second degree battery.
- (32) Aggravated assault upon a peace officer with a firearm.
- (33) Aggravated assault with a firearm.
- (34) Armed robbery; use of firearm; additional penalty.
- (35) Second degree robbery.
- (36) Disarming of a peace officer.
- (37) Stalking.
- (38) Second degree cruelty to juveniles.
- (39) Aggravated flight from an officer.
- (40) Repealed by Acts 2014, No. 602, §7, eff. June 12, 2014.
- (41) Battery of a police officer.
- (42) Trafficking of children for sexual purposes.
- (43) Human trafficking.



(44) Home invasion.

(45) Domestic abuse aggravated assault.

(46) Vehicular homicide, when the operator's blood alcohol concentration exceeds 0.20 percent by weight based on grams of alcohol per one hundred cubic centimeters of blood.

Amended by Acts 1962, No. 68, §1; Acts 1976, No. 256, §1; Acts 1977, No. 128, §1; Acts 1989, No. 777, §1; Acts 1992, No. 1015, §1; Acts 1994, 3rd Ex. Sess., No. 73, §1; Acts 1995, No. 650, §1; Acts 1995, No. 1223, §1; Acts 2001, No. 301, §2; Acts 2002, 1st Ex. Sess., No. 128, §2; Acts 2003, No. 637, §1; Acts 2004, No. 651, §1; Acts 2004, No. 676, §1; Acts 2006, No. 72, §1; Acts 2008, No. 619, §1; Acts 2010, No. 387, §1; Acts 2010, No. 524, §1; Acts 2014, No. 194, §1; Acts 2014, No. 280, §1, eff. May 28, 2014; Acts 2014, No. 602, §7, eff. June 12, 2014; Acts 2015, No. 184, §1.

#### **14:19. Use of force or violence in defense**

A.(1) The use of force or violence upon the person of another is justifiable under either of the following circumstances:

(a) When committed for the purpose of preventing a forcible offense against the person or a forcible offense or trespass against property in a person's lawful possession, provided that the force or violence used must be reasonable and apparently necessary to prevent such offense.

(b)(i) When committed by a person lawfully inside a dwelling, a place of business, or a motor vehicle as defined in R.S. 32:1(40) when the conflict began, against a person who is attempting to make an unlawful entry into the dwelling, place of business, or motor vehicle, or who has made an unlawful entry into the dwelling, place of business, or motor vehicle, and the person using the force or violence reasonably believes that the use of force or violence is necessary to prevent the entry or to compel the intruder to leave the dwelling, place of business, or motor vehicle.

(ii) The provisions of this Paragraph shall not apply when the person using the force or violence is engaged, at the time of the use of force or violence in the acquisition of, the distribution of, or possession of, with intent to distribute a controlled dangerous substance in violation of the provisions of the Uniform Controlled Dangerous Substances Law.

(2) The provisions of Paragraph (1) of this Section shall not apply where the force or violence results in a homicide.

B. For the purposes of this Section, there shall be a presumption that a person lawfully inside a dwelling, place of business, or motor vehicle held a reasonable belief that the use of force or violence was necessary to prevent unlawful entry thereto, or to compel an unlawful intruder to leave the premises or motor vehicle, if both of the following occur:

(1) The person against whom the force or violence was used was in the process of unlawfully and forcibly entering or had unlawfully and forcibly entered the dwelling, place of business, or motor vehicle.

(2) The person who used force or violence knew or had reason to believe that an unlawful and forcible entry was occurring or had occurred.

C. A person who is not engaged in unlawful activity and who is in a place where he or she has a right to be shall have no duty to retreat before using force or violence as provided for in this Section and may stand his or her ground and meet force with force.

D. No finder of fact shall be permitted to consider the possibility of retreat as a factor in determining whether or not the person who used force or violence in defense of his person or property had a reasonable belief that force or violence was reasonable and apparently necessary to prevent a forcible offense or to prevent the unlawful entry.

Acts 2006, No. 141, §1; Acts 2014, No. 163, §1.

#### **14:20. Justifiable homicide**

A. A homicide is justifiable:

(1) When committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger.

(2) When committed for the purpose of preventing a violent or forcible felony involving danger to life or of great bodily harm by one who reasonably believes that such an offense is about to be committed and that such action is necessary for its prevention. The circumstances must be sufficient to excite the fear of a reasonable person that there would be serious danger to his own life or person if he attempted to prevent the felony without the killing.

(3) When committed against a person whom one reasonably believes to be likely to use any unlawful force against a person present in a dwelling or a place of business, or when committed against a person whom one reasonably believes is attempting to use any unlawful force against a person present in a motor vehicle as defined in R.S. 32:1(40), while committing or attempting to commit a burglary or robbery of such dwelling, business, or motor vehicle.

(4)(a) When committed by a person lawfully inside a dwelling, a place of business, or a motor vehicle as defined in R.S. 32:1(40) when the conflict began, against a person who is attempting to make an unlawful entry into the dwelling, place of business, or motor vehicle, or who has made an unlawful entry into the dwelling, place of business, or motor vehicle, and the person committing the homicide reasonably believes that the use of deadly force is necessary to prevent the entry or to compel the intruder to leave the dwelling, place of business, or motor vehicle.

(b) The provisions of this Paragraph shall not apply when the person committing the homicide is engaged, at the time of the homicide, in the acquisition of, the distribution of, or possession of, with intent to distribute a controlled dangerous substance in violation of the provisions of the Uniform Controlled Dangerous Substances Law.

B. For the purposes of this Section, there shall be a presumption that a person lawfully inside a dwelling, place of business, or motor vehicle held a reasonable belief that the use of deadly force was necessary to prevent unlawful entry thereto, or to compel an unlawful intruder to leave the dwelling, place of business, or motor vehicle when the conflict began, if both of the following occur:

(1) The person against whom deadly force was used was in the process of unlawfully and forcibly entering or had unlawfully and forcibly entered the dwelling, place of business, or motor vehicle.

(2) The person who used deadly force knew or had reason to believe that an unlawful and forcible entry was occurring or had occurred.

C. A person who is not engaged in unlawful activity and who is in a place where he or she has a right to be shall have no duty to retreat before using deadly force as provided for in this Section, and may stand his or her ground and meet force with force.

D. No finder of fact shall be permitted to consider the possibility of retreat as a factor in determining whether or not the person who used deadly force had a reasonable belief that deadly force was reasonable and apparently necessary to prevent a violent or forcible felony involving life or great bodily harm or to prevent the unlawful entry.

Added by Acts 1976, No. 655, §1. Amended by Acts 1977, No. 392, §1; Acts 1983, No. 234, §1; Acts 1993, No. 516, §1; Acts 1997, No. 1378, §1; Acts 2003, No. 660, §1; Acts 2006, No. 141, §1; Acts 2014, No. 163, §1.

#### **14:20.1. Investigation of death due to violence or suspicious circumstances when claim of self-defense is raised**

Whenever a death results from violence or under suspicious circumstances and a claim of self-defense is raised, the appropriate law enforcement agency and coroner shall expeditiously conduct a full investigation of the death. All evidence of such investigation shall be preserved.

Acts 2012, No. 690, §1, eff. June 7, 2012.

#### **14:21. Aggressor cannot claim self defense**

A person who is the aggressor or who brings on a difficulty cannot claim the right of self-defense unless he withdraws from the conflict in good faith and in such a manner that his adversary knows or should know that he desires to withdraw and discontinue the conflict.

#### **14:34.1. Second degree battery**

A. Second degree battery is a battery when the offender intentionally inflicts serious bodily injury; however, this provision shall not apply to a medical provider who has obtained the consent of a patient.

B. For purposes of this Section, the following words shall have the following meanings:

(1) "Active member of the United States Armed Forces" shall mean an active member of the United States Army, the United States Marine Corps, the United States Navy, the United States Air Force, the United States Coast Guard, or the National Guard.

(2) "Disabled veteran" shall mean a veteran member of the United States Army, the United States Marine Corps, the United States Navy, the United States Air Force, the United States Coast Guard, or the National Guard who is disabled as determined by the United States Department of Veteran Affairs.

(3) "Serious bodily injury" means bodily injury which involves unconsciousness, extreme physical pain or protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty, or a substantial risk of death.

C. Whoever commits the crime of second degree battery shall be fined not more than two thousand dollars or imprisoned, with or without hard labor, for not more than eight years, or both. At least eighteen months of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence if the offender knew or should have known that the victim is an active member of the United States Armed Forces or is a disabled veteran and the second degree battery was committed because of that status.

Acts 1978, No. 394, §1; Acts 2009, No. 264, §1; Acts 2012, No. 40, §1; Acts 2014, No. 722, §1.

#### **14:34.7. Aggravated second degree battery**

A. Aggravated second degree battery is a battery committed with a dangerous weapon when the offender intentionally inflicts serious bodily injury.

B. For purposes of this Section, the following words shall have the following meanings:

(1) "Active member of the United States Armed Forces" shall mean an active member of the United States Army, the United States Marine Corps, the United States Navy, the United States Air Force, the United States Coast Guard, or the National Guard.

(2) "Disabled veteran" shall mean a veteran member of the United States Army, the United States Marine Corps, the United States Navy, the United States Air Force, the United States Coast Guard, or the National Guard who is disabled as determined by the United States Department of Veteran Affairs.

(3) "Serious bodily injury" means bodily injury which involves unconsciousness, extreme physical pain or protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty, or a substantial risk of death.

C. Whoever commits the crime of aggravated second degree battery shall be fined not more than ten thousand dollars or imprisoned, with or without hard labor, for not more than fifteen years, or both. At least one year of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence if the offender knew or should have known that the victim is an active member of the United States Armed Forces or is a disabled veteran and the aggravated second degree battery was committed because of that status.

Acts 1997, No. 1318, §1, eff. July 15, 1997; Acts 2012, No. 40, §1.

#### **14:35. Simple battery**

A. Simple battery is a battery committed without the consent of the victim.

B. Whoever commits a simple battery shall be fined not more than one thousand dollars or imprisoned for not more than six months, or both.

Acts 1978, No. 394, §1; Acts 2006, No. 81, §1; Acts 2014, No. 791, §7.

#### **14:35.3. Domestic abuse battery**

A. Domestic abuse battery is the intentional use of force or violence committed by one household member or family member upon the person of another household member or family member.

B. For purposes of this Section:

(1) "Burning" means an injury to flesh or skin caused by heat, electricity, friction, radiation, or any other chemical or thermal reaction.

(2) "Community service activities" as used in this Section may include duty in any morgue, coroner's office, or emergency treatment room of a state-operated hospital or other state-operated emergency treatment facility, with the consent of the administrator of the morgue, coroner's office, hospital, or facility.

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

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

(b) Experience in facilitating batterer intervention groups.

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

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

(5) "Household member" means any person of the opposite sex presently or formerly living in the same residence with the offender as a spouse, whether married or not, or any child presently or formerly living in the same residence with the offender, or any child of the offender regardless of where the child resides.

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

(7) "Strangulation" means intentionally impeding the normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of the victim.

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

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

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

D. On a conviction of a second offense, notwithstanding any other provision of law to the contrary, regardless of whether the second offense occurred before or after the first conviction, the

offender shall be fined not less than seven hundred fifty dollars nor more than one thousand dollars and shall be imprisoned with or without hard labor for not less than sixty days nor more than one year. At least fourteen days of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence, and the offender shall be required to participate in a court-monitored domestic abuse intervention program. Imposition or execution of the remainder of the sentence shall not be suspended unless either of the following occurs:

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

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

E. On a conviction of a third offense, notwithstanding any other provision of law to the contrary and regardless of whether the offense occurred before or after an earlier conviction, the offender shall be imprisoned with or without hard labor for not less than one year nor more than five years and shall be fined two thousand dollars. The first year of the sentence of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence.

F.(1) Except as otherwise provided in Paragraph (2) of this Subsection, on a conviction of a fourth or subsequent offense, notwithstanding any other provision of law to the contrary and regardless of whether the fourth offense occurred before or after an earlier conviction, the offender shall be imprisoned with hard labor for not less than ten years nor more than thirty years and shall be fined five thousand dollars. The first three years of the sentence of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence.

(2) If the offender has previously received the benefit of suspension of sentence, probation, or parole as a fourth or subsequent offender, no part of the sentence may be imposed with benefit of suspension of sentence, probation, or parole, and no portion of the sentence shall be imposed concurrently with the remaining balance of any sentence to be served for a prior conviction for any offense.

G.(1) For purposes of determining whether an offender has a prior conviction for violation of this Section, a conviction under this Section, or a conviction under the laws of any state or an ordinance of a municipality, town, or similar political subdivision of another state which prohibits the intentional use of force or violence committed by one household member or family member upon another household member or family member shall constitute a prior conviction.

(2) For purposes of this Section, a prior conviction shall not include a conviction for an offense under this Section if the date of completion of sentence, probation, parole, or suspension of sentence is more than ten years prior to the commission of the crime with which the offender is charged, and such

conviction shall not be considered in the assessment of penalties hereunder. However, periods of time during which the offender was incarcerated in a penal institution in this or any other state shall be excluded in computing the ten-year period.

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

I. This Subsection shall be cited as the "Domestic Abuse Child Endangerment Law". When the state proves, in addition to the elements of the crime as set forth in Subsection A of this Section, that a minor child thirteen years of age or younger was present at the residence or any other scene at the time of the commission of the offense, of the sentence imposed by the court, the execution of the minimum mandatory sentence provided by Subsection C or D of this Section, as appropriate, shall not be suspended, the minimum mandatory sentence imposed under Subsection E of this Section shall be two years without suspension of sentence, and the minimum mandatory sentence imposed under Subsection F of this Section shall be four years without suspension of sentence.

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

K. If the victim of domestic abuse battery is pregnant and the offender knows that the victim is pregnant at the time of the commission of the offense, the offender, who is sentenced under the provisions of this Section, shall be required to serve a minimum of forty-five days without benefit of suspension of sentence for a first conviction, upon a second conviction shall serve a minimum of one year imprisonment without benefit of suspension of sentence, upon a third conviction shall serve a minimum of two years with or without hard labor without benefit of probation, parole, or suspension of sentence, and upon a fourth and subsequent offense shall serve a minimum of four years at hard labor without benefit of probation, parole, or suspension of sentence.

L. Notwithstanding any other provision of law to the contrary, if the domestic abuse battery involves strangulation, the offender shall be imprisoned at hard labor for not more than three years.

M. Notwithstanding any other provision of law to the contrary, if the domestic abuse battery is committed by burning that results in serious bodily injury, the offense shall be classified as a crime of violence, and the offender shall be imprisoned at hard labor for not less than five nor more than fifty years without benefit of probation, parole, or suspension of sentence.

Acts 2003, No. 1038, §1; Acts 2004, No. 144, §1; Acts 2006, No. 559, §1; Acts 2007, No. 101, §1; Acts 2009, No. 90, §1; Acts 2009, No. 245, §1, eff. July 1, 2009; Acts 2010, No. 380, §1; Acts 2011, No. 284, §1; Acts 2012, No. 437, §1; Acts 2012, No. 535, §1, eff. June 5, 2012; Acts 2013, No. 289, §1, eff. June 14, 2013; Acts 2014, No. 194, §1; Acts 2015, No. 440, §1.



#### **14:36. Assault defined**

Assault is an attempt to commit a battery, or the intentional placing of another in reasonable apprehension of receiving a battery.

Acts 1978, No. 394, §1.

#### **14:37.7. Domestic abuse aggravated assault**

A. Domestic abuse aggravated assault is an assault with a dangerous weapon committed by one household member or family member upon another household member or family member.

B. For purposes of this Section:

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

(2) "Household member" means any person of the opposite sex presently or formerly living in the same residence with the offender as a spouse, whether married or not, or any child presently or formerly living in the same residence with the offender, or any child of the offender regardless of where the child resides.

C. Whoever commits the crime of domestic abuse aggravated assault shall be imprisoned at hard labor for not less than one year nor more than five years and fined not more than five thousand dollars.

D. This Subsection shall be cited as the "Domestic Abuse Aggravated Assault Child Endangerment Law". When the state proves, in addition to the elements of the crime as set forth in Subsection A of this Section, that a minor child thirteen years of age or younger was present at the residence or any other scene at the time of the commission of the offense, the mandatory minimum sentence imposed by the court shall be two years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

Acts 2012, No. 535, §1, eff. June 5, 2012; Acts 2015, No. 440, §1.

#### **14:40.2. Stalking**

A. Stalking is the intentional and repeated following or harassing of another person that would cause a reasonable person to feel alarmed or to suffer emotional distress. Stalking shall include but not be limited to the intentional and repeated uninvited presence of the perpetrator at another person's home, workplace, school, or any place which would cause a reasonable person to be alarmed, or to suffer emotional distress as a result of verbal, written, or behaviorally implied threats of death, bodily injury, sexual assault, kidnapping, or any other statutory criminal act to himself or any member of his family or any person with whom he is acquainted.

B.(1)(a) Notwithstanding any law to the contrary, on first conviction, whoever commits the crime of stalking shall be fined not less than five hundred dollars nor more than one thousand dollars and shall be imprisoned for not less than thirty days nor more than one year. Notwithstanding any other sentencing provisions, any person convicted of stalking shall undergo a psychiatric evaluation. Imposition of the sentence shall not be suspended unless the offender is placed on probation and participates in a court-approved counseling which could include but shall not be limited to anger management, abusive behavior intervention groups, or any other type of counseling deemed appropriate by the courts.

(b) Whoever commits the crime of stalking against a victim under the age of eighteen when the provisions of Paragraph (6) of this Subsection are not applicable shall be imprisoned for not more than three years, with or without hard labor, and fined not more than two thousand dollars, or both.

(2)(a) Any person who commits the offense of stalking and who is found by the trier of fact, whether the jury at a jury trial, the judge in a bench trial, or the judge at a sentencing hearing following a jury trial, beyond a reasonable doubt to have placed the victim of the stalking in fear of death or bodily injury by the actual use of or the defendant's having in his possession during the instances which make up the crime of stalking a dangerous weapon or is found beyond a reasonable doubt to have placed the victim in reasonable fear of death or bodily injury, shall be imprisoned for not less than one year nor more than five years, with or without hard labor, without benefit of probation, parole, or suspension of sentence and may be fined one thousand dollars, or both. Whether or not the defendant's use of or his possession of the dangerous weapon is a crime or, if a crime, whether or not he is charged for that offense separately or in addition to the crime of stalking shall have no bearing or relevance as to the enhanced sentence under the provisions of this Paragraph.

(b) If the victim is under the age of eighteen, and when the provisions of Paragraph (6) of this Subsection are not applicable, the offender shall be imprisoned for not less than two years nor more than five years, with or without hard labor, without benefit of probation, parole, or suspension of sentence and may be fined not less than one thousand nor more than two thousand dollars, or both.

(3) Any person who commits the offense of stalking against a person for whose benefit a protective order, a temporary restraining order, or any lawful order prohibiting contact with the victim issued by a judge or magistrate is in effect in either a civil or criminal proceeding, protecting the victim of the stalking from acts by the offender which otherwise constitute the crime of stalking, shall be punished by imprisonment with or without hard labor for not less than ninety days and not more than two years or fined not more than five thousand dollars, or both.

(4) Upon a second conviction occurring within seven years of a prior conviction for stalking, the offender shall be imprisoned with or without hard labor for not less than five years nor more than twenty years, without benefit of probation, parole, or suspension of sentence, and may be fined not more than five thousand dollars, or both.

(5) Upon a third or subsequent conviction, the offender shall be imprisoned with or without hard labor for not less than ten years and not more than forty years and may be fined not more than five thousand dollars, or both.

(6)(a) Any person thirteen years of age or older who commits the crime of stalking against a child twelve years of age or younger and who is found by the trier of fact, whether the jury at a jury trial, the judge in a bench trial, or the judge at a sentencing hearing following a jury trial, beyond a reasonable doubt to have placed the child in reasonable fear of death or bodily injury, or in reasonable fear of the death or bodily injury of a family member of the child shall be punished by imprisonment with or without hard labor for not less than one year and not more than three years and fined not less than fifteen hundred dollars and not more than five thousand dollars, or both.

(b) Lack of knowledge of the child's age shall not be a defense.

C. For the purposes of this Section, the following words shall have the following meanings:

(1) "Harassing" means the repeated pattern of verbal communications or nonverbal behavior without invitation which includes but is not limited to making telephone calls, transmitting electronic mail, sending messages via a third party, or sending letters or pictures.

(2) "Pattern of conduct" means a series of acts over a period of time, however short, evidencing an intent to inflict a continuity of emotional distress upon the person. Constitutionally protected activity is not included within the meaning of pattern of conduct.

(3) Repealed by Acts 1993, No. 125, §2.

D. As used in this Section, when the victim of the stalking is a child twelve years old or younger:

(1) "Pattern of conduct" includes repeated acts of nonconsensual contact involving the victim or a family member.

(2) "Family member" includes:

(a) A child, parent, grandparent, sibling, uncle, aunt, nephew, or niece of the victim, whether related by blood, marriage, or adoption.

(b) A person who lives in the same household as the victim.

(3)(a) "Nonconsensual contact" means any contact with a child twelve years old or younger that is initiated or continued without that child's consent, that is beyond the scope of the consent provided by that child, or that is in disregard of that child's expressed desire that the contact be avoided or discontinued.

(b) "Nonconsensual contact" includes:

(i) Following or appearing within the sight of that child.

(ii) Approaching or confronting that child in a public place or on private property.

(iii) Appearing at the residence of that child.

(iv) Entering onto or remaining on property occupied by that child.

(v) Contacting that child by telephone.

(vi) Sending mail or electronic communications to that child.

(vii) Placing an object on, or delivering an object to, property occupied by that child.

(c) "Nonconsensual contact" does not include any otherwise lawful act by a parent, tutor, caretaker, mandatory reporter, or other person having legal custody of the child as those terms are defined in the Louisiana Children's Code.

(4) "Victim" means the child who is the target of the stalking.

E. Whenever it is deemed appropriate for the protection of the victim, the court may send written notice to any employer of a person convicted for a violation of the provisions of this Section describing the conduct on which the conviction was based.

F.(1) Upon motion of the district attorney or on the court's own motion, whenever it is deemed appropriate for the protection of the victim, the court may, in addition to any penalties imposed pursuant to the provisions of this Section, grant a protective order which directs the defendant to refrain from abusing, harassing, interfering with the victim or the employment of the victim, or being physically present within a certain distance of the victim.

(2) Any protective order granted pursuant to the provisions of this Subsection shall be served on the defendant at the time of sentencing.

(3)(a) The court shall order that the protective order be effective either for an indefinite period of time or for a fixed term which shall not exceed eighteen months.

(b) If the court grants the protective order for an indefinite period of time pursuant to Subparagraph (a) of this Paragraph, after a hearing, on the motion of any party and for good cause shown, the court may modify the indefinite effective period of the protective order to be effective for a fixed term, not to exceed eighteen months, or to terminate the effectiveness of the protective order. A motion to modify or terminate the effectiveness of the protective order may be granted only after a good faith effort has been made to provide reasonable notice of the hearing to the victim, the victim's designated agent, or the victim's counsel, and either of the following occur:

(i) The victim, the victim's designated agent, or the victim's counsel is present at the hearing or provides written waiver of such appearance.

(ii) After a good faith effort has been made to provide reasonable notice of the hearing, the victim could not be located.

(4)(a) Immediately upon granting a protective order, the court shall cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2, shall sign such order, and shall forward it to the clerk of court for filing, without delay.

(b) The clerk of the issuing court shall send a copy of the Uniform Abuse Prevention Order or any modification thereof to the chief law enforcement official of the parish where the victim resides. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer as provided in this Subparagraph until otherwise directed by the court.

(c) The clerk of the issuing court shall transmit the Uniform Abuse Prevention Order, or any modification thereof, to the Louisiana Protective Order Registry pursuant to R.S. 46:2136.2, by facsimile transmission, mail, or direct electronic input, where available, as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court.

G. The provisions of this Section shall not apply to a private investigator licensed pursuant to the provisions of Chapter 56 of Title 37 of the Louisiana Revised Statutes of 1950, acting during the course and scope of his employment and performing his duties relative to the conducting of an investigation.

H. The provisions of this Section shall not apply to an investigator employed by an authorized insurer regulated pursuant to the provisions of Title 22 of the Louisiana Revised Statutes of 1950, acting during the course and scope of his employment and performing his duties relative to the conducting of an insurance investigation.

I. The provisions of this Section shall not apply to an investigator employed by an authorized self-insurance group or entity regulated pursuant to the provisions of Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950, acting during the course and scope of his employment and performing his duties relative to the conducting of an insurance investigation.

J. A conviction for stalking shall not be subject to expungement as provided for by R.S. 44:9.

Acts 1992, No. 80, §1; Acts 1993, No. 125, §§1, 2; Acts 1994, 3rd Ex. Sess., No. 30, §1; Acts 1995, No. 416, §1; Acts 1995, No. 645, §1; Acts 1997, No. 1231, §1, eff. July 15, 1997; Acts 1999, No. 957, §1; Acts 1999, No. 963, §1; Acts 2001, No. 1141, §1; Acts 2003, No. 1089, §1; Acts 2005, No. 161, §1; Acts 2007, No. 62, §1; Acts 2007, No. 226, §1; Acts 2012, No. 197, §1; Acts 2015, No. 440, §1.

### **14:40.3. Cyberstalking**

A. For the purposes of this Section, the following words shall have the following meanings:

(1) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

(2) "Electronic mail" means the transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

B. Cyberstalking is action of any person to accomplish any of the following:

(1) Use in electronic mail or electronic communication of any words or language threatening to inflict bodily harm to any person or to such person's child, sibling, spouse, or dependent, or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person.

(2) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of threatening, terrifying, or harassing any person.

(3) Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to threaten, terrify, or harass.

(4) Knowingly permit an electronic communication device under the person's control to be used for the taking of an action in Paragraph (1), (2), or (3) of this Subsection.

C.(1) Whoever commits the crime of cyberstalking shall be fined not more than two thousand dollars, or imprisoned for not more than one year, or both.

(2) Upon a second conviction occurring within seven years of the prior conviction for cyberstalking, the offender shall be imprisoned for not less than one hundred and eighty days and not more than three years, and may be fined not more than five thousand dollars, or both.

(3) Upon a third or subsequent conviction occurring within seven years of a prior conviction for stalking, the offender shall be imprisoned for not less than two years and not more than five years and may be fined not more than five thousand dollars, or both.

(4)(a) In addition, the court shall order that the personal property used in the commission of the offense shall be seized and impounded, and after conviction, sold at public sale or public auction by the district attorney in accordance with R.S. 15:539.1.

(b) The personal property made subject to seizure and sale pursuant to Subparagraph (a) of this Paragraph may include, but shall not be limited to, electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media.

D. Any offense under this Section committed by the use of electronic mail or electronic communication may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received, or originally viewed by any person.

E. This Section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others.

Acts 2001, No. 737, §1; Acts 2010, No. 763, §1.

#### **14:46. False imprisonment**

A. False imprisonment is the intentional confinement or detention of another, without his consent and without proper legal authority.

B. Whoever commits the crime of false imprisonment shall be fined not more than two hundred dollars, or imprisoned for not more than six months, or both.

Acts 2014, No. 791, §7.

##### **14:46.1. False imprisonment; offender armed with dangerous weapon**

A. False imprisonment while armed with a dangerous weapon is the unlawful intentional confinement or detention of another while the offender is armed with a dangerous weapon.

B. Whoever commits the crime of false imprisonment while armed with a dangerous weapon shall be imprisoned, with or without hard labor, for not more than ten years.

Added by Acts 1982, No. 752, §1.

##### **14:46.2. Human trafficking**

A. It shall be unlawful:

(1) For any person to knowingly recruit, harbor, transport, provide, solicit, receive, isolate, entice, obtain, or maintain the use of another person through fraud, force, or coercion to provide services or labor.

(2) For any person to knowingly benefit from activity prohibited by the provisions of this Section.

(3) For any person to knowingly facilitate any of the activities prohibited by the provisions of this Section by any means, including but not limited to helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to or received by the person.

B.(1) Except as provided in Paragraphs (2) and (3) of this Subsection, whoever commits the crime of human trafficking shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not more than ten years.

(2) Whoever commits the crime of human trafficking when the services include commercial sexual activity or any sexual conduct constituting a crime under the laws of this state shall be fined not more than fifteen thousand dollars and shall be imprisoned at hard labor for not more than twenty years.

(3) Whoever commits the crime of human trafficking when the trafficking involves a person under the age of eighteen shall be fined not more than twenty-five thousand dollars and shall be imprisoned at hard labor for not less than five nor more than twenty-five years, five years of which shall be without the benefit of parole, probation, or suspension of sentence.

(4)(a) In addition, the court shall order that the personal property used in the commission of the offense shall be seized and impounded, and after conviction, sold at public sale or public auction by the district attorney in accordance with R.S. 15:539.1.

(b) The personal property made subject to seizure and sale pursuant to Subparagraph (a) of this Paragraph may include, but shall not be limited to, electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media.

C. For purposes of this Section:

(1) "Commercial sexual activity" means any sexual act performed or conducted when anything of value has been given, promised, or received by any person.

(2) "Debt bondage" means inducing an individual to provide any of the following:

(a) Commercial sexual activity in payment toward or satisfaction of a real or purported debt.

(b) Labor or services in payment toward or satisfaction of a real or purported debt if either of the following occur:

(i) The reasonable value of the labor or services provided is not applied toward the liquidation of the debt.

(ii) The length of the labor or services is not limited and the nature of the labor or services is not defined.

(3) "Fraud, force, or coercion" shall include but not be limited to any of the following:

(a) Causing or threatening to cause serious bodily injury.

(b) Physically restraining or threatening to physically restrain another person.



- (c) Abduction or threatened abduction of an individual.
  - (d) The use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of an individual.
  - (e) The abuse or threatened abuse of law or legal process.
  - (f) The actual or threatened destruction, concealment, removal, confiscation, or possession of any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person.
  - (g) Controlling or threatening to control an individual's access to a controlled dangerous substance as set forth in R.S. 40:961 et seq.
  - (h) The use of an individual's physical or mental impairment, where such impairment has substantial adverse effects on the individual's cognitive or volitional functions.
  - (i) The use of debt bondage or civil or criminal fraud.
  - (j) Extortion as defined in R.S. 14:66.
- (4) "Labor or services" means activity having an economic value.
- D. It shall not be a defense to prosecution for a violation of this Section that the person being recruited, harbored, transported, provided, solicited, received, isolated, enticed, obtained, or maintained is actually a law enforcement officer or peace officer acting within the official scope of his duties.
- E. If any Subsection, Paragraph, Subparagraph, Item, sentence, clause, phrase, or word of this Section is for any reason held to be invalid, unlawful, or unconstitutional, such decision shall not affect the validity of the remaining portions of this Section.
- F.(1) A victim of trafficking involving services that include commercial sexual activity or any sexual contact which constitutes a crime pursuant to the laws of this state shall have an affirmative defense to prosecution for any of the following offenses which were committed as a direct result of being trafficked:
- (a) R.S. 14:82 (Prostitution).
  - (b) R.S. 14:83.3 (Prostitution by massage).
  - (c) R.S. 14:83.4 (Massage; sexual conduct prohibited).
  - (d) R.S. 14:89 (Crime against nature).
  - (e) R.S. 14:89.2 (Crime against nature by solicitation).

(2) Any person seeking to raise this affirmative defense shall provide written notice to the state at least forty-five days prior to trial or at an earlier time as otherwise required by the court.

(3) Any person determined to be a victim pursuant to the provisions of this Subsection shall be notified of any treatment or specialized services for sexually exploited persons to the extent that such services are available.

Acts 2005, No. 187, §1; Acts 2010, No. 382, §1; Acts 2010, No. 763, §1; Acts 2011, No. 64, §1; Acts 2012, No. 446, §1; Acts 2014, No. 564, §1.

#### **14:46.3. Trafficking of children for sexual purposes**

A. It shall be unlawful:

(1) For any person to knowingly recruit, harbor, transport, provide, sell, purchase, receive, isolate, entice, obtain, or maintain the use of a person under the age of eighteen years for the purpose of engaging in commercial sexual activity.

(2) For any person to knowingly benefit from activity prohibited by the provisions of this Section.

(3) For any parent, legal guardian, or person having custody of a person under the age of eighteen years to knowingly permit or consent to such minor entering into any activity prohibited by the provisions of this Section.

(4) For any person to knowingly facilitate any of the activities prohibited by the provisions of this Section by any means, including but not limited to helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to or received by the person.

(5) For any person to knowingly advertise any of the activities prohibited by this Section.

(6) For any person to knowingly sell or offer to sell travel services that include or facilitate any of the activities prohibited by this Section.

B. For purposes of this Section, "commercial sexual activity" means any sexual act performed or conducted when any thing of value has been given, promised, or received by any person.

C.(1) Consent of the minor shall not be a defense to a prosecution pursuant to the provisions of this Section.

(2) Lack of knowledge of the victim's age shall not be a defense to a prosecution pursuant to the provisions of this Section.

(3) It shall not be a defense to prosecution for a violation of this Section that the person being recruited, harbored, transported, provided, sold, purchased, received, isolated, enticed, obtained, or maintained is actually a law enforcement officer or peace officer acting within the official scope of his duties.

D.(1)(a) Whoever violates the provisions of Paragraph (A)(1), (2), (4), (5), or (6) of this Section shall be fined not more than fifty thousand dollars, imprisoned at hard labor for not less than fifteen, nor more than fifty years, or both.

(b) Whoever violates the provisions of Paragraph (A)(1), (2), (4), (5), or (6) of this Section when the victim is under the age of fourteen years shall be fined not more than seventy-five thousand dollars and imprisoned at hard labor for not less than twenty-five years nor more than fifty years. At least twenty-five years of the sentence imposed shall be served without benefit of probation, parole, or suspension of sentence.

(c) Any person who violates the provisions of Paragraph (A)(1), (2), (4), (5), or (6) of this Section, who was previously convicted of a sex offense as defined in R.S. 15:541 when the victim of the sex offense was under the age of eighteen years, shall be fined not more than one hundred thousand dollars and shall be imprisoned at hard labor for not less than fifty years or for life. At least fifty years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

(2) Whoever violates the provisions of Paragraph (A)(3) of this Section shall be required to serve at least five years of the sentence provided for in Subparagraph (D)(1)(a) of this Section without benefit of probation, parole, or suspension of sentence. Whoever violates the provisions of Paragraph (A)(3) when the victim is under the age of fourteen years shall be required to serve at least ten years of the sentence provided for in Subparagraph (D)(1)(b) of this Section without benefit of probation, parole, or suspension of sentence.

(3)(a) In addition, the court shall order that the personal property used in the commission of the offense shall be seized and impounded, and after conviction, sold at public sale or public auction by the district attorney in accordance with R.S. 15:539.1.

(b) The personal property made subject to seizure and sale pursuant to Subparagraph (a) of this Paragraph may include, but shall not be limited to, electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media.

E. No victim of trafficking as provided by the provisions of this Section shall be prosecuted for unlawful acts committed as a direct result of being trafficked. Any child determined to be a victim pursuant to the provisions of this Subsection shall be eligible for specialized services for sexually exploited children.

F. The provisions of Chapter 1 of Title V of the Louisiana Children's Code regarding the multidisciplinary team approach applicable to children who have been abused or neglected, to the extent practical, shall apply to the children who are victims of the provisions of this Section.

G. If any Subsection, Paragraph, Subparagraph, Item, sentence, clause, phrase, or word of this Section is for any reason held to be invalid, unlawful, or unconstitutional, such decision shall not affect the validity of the remaining portions of this Section.

Acts 2009, No. 375, §1; Acts 2010, No. 763, §1; Acts 2011, No. 64, §1; Acts 2012, No. 446, §1; Acts 2014, No. 564, §1.

#### **14:62.8. Home invasion**

A. Home invasion is the unauthorized entering of any inhabited dwelling, or other structure belonging to another and used in whole or in part as a home or place of abode by a person, where a person is present, with the intent to use force or violence upon the person of another or to vandalize, deface, or damage the property of another.

B.(1) Except as provided in Paragraphs (2) and (3) of this Subsection, whoever commits the crime of home invasion shall be fined not more than five thousand dollars and shall be imprisoned at hard labor for not more than twenty-five years.

(2) Whoever commits the crime of home invasion while armed with a dangerous weapon shall be fined not more than seven thousand dollars and shall be imprisoned at hard labor for not less than five years nor more than thirty years.

(3) Whoever commits the crime of home invasion when, at the time of the unauthorized entering, there is present in the dwelling or structure any person who is under the age of twelve years, is sixty-five years of age or older, or who has a developmental disability as defined in R.S. 28:451.2, shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than ten nor more than twenty-five years. At least ten years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

Acts 2008, No. 6, §1; Acts 2010, No. 524, §1; Acts 2012, No. 370, §1; Acts 2014, No. 300, §1, eff. May 28, 2014.

#### **14:63.3. Entry on or remaining in places or on land after being forbidden**

A. No person shall without authority go into or upon or remain in or upon or attempt to go into or upon or remain in or upon any structure, watercraft, or any other movable, or immovable property, which belongs to another, including public buildings and structures, ferries, and bridges, or any part, portion, or area thereof, after having been forbidden to do so, either orally or in writing, including by means of any sign hereinafter described, by any owner, lessee, or custodian of the property or by any other authorized person. For the purposes of this Section, the above mentioned sign means a sign or signs posted on or in the structure, watercraft, or any other movable, or immovable property, including public buildings and structures, ferries and bridges, or part, portion or area thereof, at a place or places where such sign or signs may be reasonably expected to be seen.

B. Whoever violates the provisions of this Section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars or imprisoned in the parish jail for not more than six months, or both.

Added by Acts 1960, No. 78, §1. Amended by Acts 1963, No. 91, §1; Acts 1968, No. 647, §1; Acts 1977, No. 445, §1; Acts 1978, No. 694, §1.

#### **14:73.3. Offenses against computer equipment or supplies**

A. An offense against computer equipment or supplies is the intentional modification or destruction, without consent, of computer equipment or supplies used or intended to be used in a computer, computer system, or computer network.

B. (1) Whoever commits an offense against computer equipment or supplies shall be fined not more than five hundred dollars, or be imprisoned for not more than six months, or both.

(2) However, when the damage or loss amounts to a value of five hundred dollars or more, the offender may be fined not more than ten thousand dollars, or imprisoned with or without hard labor, for not more than five years, or both.

Acts 1984, No. 711, §1.

#### **14:73.7. Computer tampering**

A. Computer tampering is the intentional commission of any of the actions enumerated in this Subsection when that action is taken knowingly and without the authorization of the owner of a computer:

(1) Accessing or causing to be accessed a computer or any part of a computer or any program or data contained within a computer.

(2) Copying or otherwise obtaining any program or data contained within a computer.

(3) Damaging or destroying a computer, or altering, deleting, or removing any program or data contained within a computer, or eliminating or reducing the ability of the owner of the computer to access or utilize the computer or any program or data contained within the computer.

(4) Introducing or attempting to introduce any electronic information of any kind and in any form into one or more computers, either directly or indirectly, and either simultaneously or sequentially, with the intention of damaging or destroying a computer, or altering, deleting, or removing any program or data contained within a computer, or eliminating or reducing the ability of the owner of the computer to access or utilize the computer or any program or data contained within the computer.

B. For purposes of this Section:

(1) Actions which are taken without authorization include actions which intentionally exceed the limits of authorization.

(2) If an owner of a computer has established a confidential or proprietary code which is required in order to access a computer, and that code has not been issued to a person, and that person uses that code to access that computer or to cause that computer to be accessed, that action creates a rebuttable presumption that the action was taken without authorization or intentionally exceeded the limits of authorization.

(3) The vital services or operations of the state, or of any parish, municipality, or other local governing authority, or of any utility company are the services or operations which are necessary to protect the public health, safety, and welfare, and include but are not limited to: law enforcement; fire protection; emergency services; health care; transportation; communications; drainage; sewerage; and utilities, including water, electricity, and natural gas and other forms of energy.

C. Whoever commits the crime of computer tampering as defined in Paragraphs (A)(1) and (2) of this Section shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

D. Whoever commits the crime of computer tampering as defined in Paragraphs (A)(3) and (4) of this Section shall be fined not more than ten thousand dollars or imprisoned, with or without hard labor, for not more than five years, or both.

E. Whoever violates the crime of computer tampering as defined in Paragraphs (A)(3) and (4) of this Section with the intention of disrupting the vital services or operations of the state, or of any parish, municipality, or other local governing authority, or of any utility company, or with the intention of causing death or great bodily harm to one or more persons, shall be fined not more than ten thousand dollars or imprisoned at hard labor for not more than fifteen years, or both.

Acts 2001, No. 829, §1.

#### **14:79. Violation of protective orders**

A.(1)(a) Violation of protective orders is the willful disobedience of a preliminary or permanent injunction or protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., R.S. 46:2181 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 327.1, 335.1, 335.2, and 871.1 after a contradictory court hearing, or the willful disobedience of a temporary restraining order or any ex parte protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S.

46:2151, R.S. 46:2171 et seq., criminal stay-away orders as provided for in Code of Criminal Procedure Articles 327.1, 335.1, 335.2, Children's Code Article 1564 et seq., or Code of Civil Procedure Articles 3604 and 3607.1, if the defendant has been given notice of the temporary restraining order or ex parte protective order by service of process as required by law.

(b) A defendant may also be deemed to have been properly served if tendered a certified copy of a temporary restraining order or ex parte protective order by any law enforcement officer who has been called to any scene where the named defendant is present. Such service of a previously issued temporary restraining order or ex parte protective order if noted in the police report shall be deemed sufficient evidence of service of process and admissible in any civil or criminal proceedings.

(2) Violation of protective orders shall also include the willful disobedience of an order of protection issued by a foreign state.

(3) Violation of protective orders shall also include the willful disobedience of the following:

(a) An order issued by any state, federal, parish, city, or municipal court judge, magistrate judge, commissioner or justice of the peace that a criminal defendant stay away from a specific person or persons as a condition of that defendant's release on bond.

(b) An order issued by any state, federal, parish, city, or municipal court judge, magistrate judge, commissioner or justice of the peace that a defendant convicted of a violation of any state, federal, parish, municipal, or city criminal offense stay away from any specific person as a condition of that defendant's release on probation.

(c) A condition of a parole release which requires that the parolee stay away from any specific person.

B.(1) On a first conviction for violation of protective orders which does not involve a battery or any crime of violence as defined by R.S. 14:2(B) against the person protected by the protective order, the offender shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

(2) On a second conviction for violation of protective orders which does not involve a battery or any crime of violence as defined by R.S. 14:2(B) against the person protected by the protective order, regardless of whether the second offense occurred before or after the first conviction, the offender shall be fined not more than one thousand dollars and imprisoned for not less than forty-eight hours nor more than six months. At least forty-eight hours of the sentence of imprisonment imposed under this Paragraph shall be without benefit of probation, parole, or suspension of sentence. If a portion of the sentence is imposed with benefit of probation, parole, or suspension of sentence, the court shall require the offender to participate in a court-monitored domestic abuse intervention program as defined by R.S. 14:35.3.

(3) On a third or subsequent conviction for violation of protective orders which does not involve a battery or any crime of violence as defined by R.S. 14:2(B) against the person protected by the

protective order, regardless of whether the current offense occurred before or after the earlier convictions, the offender shall be fined not more than one thousand dollars and imprisoned with or without hard labor for not less than fourteen days nor more than two years. At least fourteen days of the sentence of imprisonment imposed under this Paragraph shall be without benefit of probation, parole, or suspension of sentence. If a portion of the sentence is imposed with benefit of probation, parole, or suspension of sentence, the court shall require the offender to participate in a court-monitored domestic abuse intervention program as defined by R.S. 14:35.3.

C.(1) Whoever is convicted of the offense of violation of protective orders where the violation involves a battery or any crime of violence as defined by R.S. 14:2(B) against the person protected by the protective order, and who has not been convicted of violating a protective order or of an assault or battery upon the person protected by the protective order within the five years prior to commission of the instant offense, shall be fined not more than five hundred dollars and imprisoned for not less than fourteen days nor more than six months. At least fourteen days of the sentence of imprisonment imposed under this Paragraph shall be without benefit of probation, parole, or suspension of sentence. If a portion of the sentence is imposed with benefit of probation, parole, or suspension of sentence, the court shall require the offender to participate in a court-monitored domestic abuse intervention program as defined by R.S. 14:35.3 as part of that probation.

(2) Whoever is convicted of the offense of violation of protective orders where the violation involves a battery or any crime of violence as defined by R.S. 14:2(B) against the person for whose benefit the protective order is in effect, and who has been convicted not more than one time of violating a protective order or of an assault or battery upon the person for whose benefit the protective order is in effect within the five-year period prior to commission of the instant offense, regardless of whether the instant offense occurred before or after the earlier convictions, shall be fined not more than one thousand dollars and imprisoned with or without hard labor for not less than three months nor more than two years. At least thirty days of the sentence of imprisonment imposed under this Paragraph shall be without benefit of probation, parole, or suspension of sentence. If a portion of the sentence is imposed with benefit of probation, parole, or suspension of sentence, the court shall require the offender to participate in a court-monitored domestic abuse intervention program as defined by R.S. 14:35.3.

(3) Whoever is convicted of the offense of violation of protective orders where the violation involves a battery or any crime of violence as defined by R.S. 14:2(B) against the person for whose benefit the protective order is in effect, and who has more than one conviction of violating a protective order or of an assault or battery upon the person for whose benefit the protective order is in effect during the five-year period prior to commission of the instant offense, regardless of whether the instant offense occurred before or after the earlier convictions, the offender shall be fined not more than two thousand dollars and imprisoned with or without hard labor for not less than one year nor more than five years. At least one year of the sentence of imprisonment imposed under this Paragraph shall be without benefit of probation, parole, or suspension of sentence.



D. If, as part of any sentence imposed under this Section, a fine is imposed, the court may direct that the fine be paid for the support of the spouse or children of the offender.

E.(1) Law enforcement officers shall use every reasonable means, including but not limited to immediate arrest of the violator, to enforce a preliminary or permanent injunction or protective order obtained pursuant to R.S. 9:361, R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., R.S. 46:2181 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 327.1, 335.1, 335.2, and 871.1 after a contradictory court hearing, or to enforce a temporary restraining order or ex parte protective order issued pursuant to R.S. 9:361, R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., R.S. 46:2181 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 327.1, 335.1, and 335.2 if the defendant has been given notice of the temporary restraining order or ex parte protective order by service of process as required by law.

(2) Law enforcement officers shall at a minimum issue a summons to the person in violation of a temporary restraining order, a preliminary or permanent injunction, or a protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2181 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 30, 327.1, 335.2, and 871.1.

F. This Section shall not be construed to bar or limit the effect of any other criminal statute or civil remedy.

G. "Instant offense" as used in this Section means the offense which is before the court.

H. An offender ordered to participate in a court-monitored domestic abuse intervention program under the provision of this Section shall pay the cost incurred in participating in the program, unless the court determines that the offender is unable to pay. Failure to make payment under this Subsection shall subject the offender to revocation of probation.

Added by Acts 1983, No. 497, §1; Acts 1987, No. 268, §1; Acts 1994, 3rd Ex. Sess., No. 70, §1; Acts 1995, No. 905, §1; Acts 1997, No. 1156, §6; Acts 1999, No. 659, §1; Acts 1999, No. 1200, §1; Acts 2003, No. 750, §5; Acts 2003, No. 1198, §1; Acts 2014, No. 317, §2; Acts 2014, No. 318, §2; Acts 2014, No. 355, §3; Acts 2015, No. 242, §2; Acts 2015, No. 440, §1.

#### **14:95.10. Possession of a firearm or carrying of a concealed weapon by a person convicted of domestic abuse battery**

A. It is unlawful for any person who has been convicted of the crime of domestic abuse battery, R.S. 14:35.3, to possess a firearm or carry a concealed weapon.

B. Whoever is found guilty of violating the provisions of this Section shall be imprisoned with or without hard labor for not less than one year nor more than five years and shall be fined not less than five hundred dollars nor more than one thousand dollars.

C. A person shall not be considered to have been convicted of domestic abuse battery for purposes of this Section unless the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and in the case of a prosecution for an offense described in this Section for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either the case was tried by a jury, or the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise. A person shall not be considered convicted of R.S. 14:35.3 for the purposes of this Section if the conviction has been expunged, set aside, or is an offense for which the person has been pardoned or had civil rights restored unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, possess, or receive firearms.

D. For the provisions of this Section, "firearm" means any pistol, revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon, or assault rifle which is designed to fire or is capable of firing fixed cartridge ammunition or from which a shot or projectile is discharged by an explosive.

E. The provisions of this Section prohibiting the possession of firearms and carrying concealed weapons by persons who have been convicted of domestic abuse battery shall not apply to any person who has not been convicted of domestic abuse battery for a period of ten years from the date of completion of sentence, probation, parole, or suspension of sentence.

Acts 2014, No. 195, §1.

#### **15:590. Obtaining and filing fingerprint and identification data**

The bureau shall obtain and file the name, fingerprints, description, photographs, and any other pertinent identifying data as the deputy secretary deems necessary, of any person who meets any of the following:

- (1) Has been or is hereafter arrested, formally indicted, or taken into custody in this state;
  - (a) For any offense which is a felony and for certain misdemeanor offenses designated by the deputy secretary;
  - (b) For any violation of any ordinance which the bureau shall determine to be substantially related to or the equivalent of any offense described under state law as a felony offense; or
  - (c) For any other offense which the deputy secretary may designate.
- (2) Is or becomes confined to any prison, penal institution, correctional facility, or institution for the criminally insane.

(3) After death, has become a human corpse which is unidentified or involved in any autopsy or inquest by a coroner.

(4) Is a fugitive from justice.

(5) Is or has been a habitual offender.

(6) Has been arrested, or has been issued a summons, for any offense that is defined in R.S. 15:603 as a felony, felony-grade delinquent act, or other specified offense.

(7) Has been arrested, or has been issued a summons, for a violation of R.S. 14:98.

(8) Has been arrested, or has been issued a summons and subsequently convicted, for a violation of any state law or local ordinance that prohibits the use of force or a deadly weapon against any family member as defined by R.S. 14:35.3 or any household member as defined by R.S. 14:35.3.

Acts 1981, No. 449, §1, eff. July 1, 1981; Acts 2014, No. 299, §1; Acts 2015, No. 440, §2.

## PART II. DOMESTIC ABUSE ASSISTANCE

### **46:2131. Purposes**

The purpose of this Part is to recognize and address the complex legal and social problems created by domestic violence. The legislature finds that existing laws which regulate the dissolution of marriage do not adequately address problems of protecting and assisting the victims of domestic abuse. The legislature further finds that previous societal attitudes have been reflected in the policies and practices of law enforcement agencies and prosecutors which have resulted in different treatment of crimes occurring between family members, household members, or dating partners and those occurring between strangers. It is the intent of the legislature to provide a civil remedy for domestic violence which will afford the victim immediate and easily accessible protection. Furthermore, it is the intent of the legislature that the official response of law enforcement agencies to cases of domestic violence shall stress the enforcement of laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated.

### **46:2132. Definitions**

As used in this Part:

(1) "Adult" means any person eighteen years of age or older, or any person under the age of eighteen who has been emancipated by marriage or otherwise.

(2) "Court" shall mean any court of competent jurisdiction in the state of Louisiana.

(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 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.

#### **46:2133. Jurisdiction; venue; standing**

A. Any court in the state of Louisiana which is empowered to hear family or juvenile matters shall have jurisdiction over proceedings appropriate to it under this Part.

B. Venue lies:

(1) In the parish where the marital domicile is located or where the household is located.

(2) In the parish where the defendant resides.

(3) In the parish where the abuse is alleged to have been committed.

(4) In the parish where the petitioner resides.

(5) In the parish where an action for annulment of marriage or for a divorce could be brought pursuant to Code of Civil Procedure Article 3941(A).

C. An adult may seek relief under this Part by filing a petition with the court alleging abuse by the defendant. Any parent, adult household member, or district attorney may seek relief on behalf of any minor child or any person alleged to be incompetent by filing a petition with the court alleging abuse by the defendant. A petitioner's right to relief under this Part shall not be affected by leaving the residence or household to avoid further abuse.

#### **46:2134. Petition**

A. A petition filed under the provisions of this Part shall contain the following:

(1) The name of each petitioner and each person on whose behalf the petition is filed, and the name, address, and parish of residence of each individual alleged to have committed abuse, if known; if the petition is being filed on behalf of a child or person alleged to be incompetent, the relationship between that person and the petitioner.

(2) The facts and circumstances concerning the alleged abuse.

(3) The relationship between each petitioner and each individual alleged to have committed abuse.

(4) A request for one or more protective orders.

B. The address and parish of each petitioner and each person on whose behalf the petition is filed may remain confidential with the court.

C. If the petition requests a protective order for a spouse and alleges that the other spouse has committed abuse, the petition shall state whether a suit for divorce is pending.

D. If the petition requests the issuance of an ex parte temporary restraining order, the petition shall contain an affidavit signed by each petitioner that the facts and circumstances contained in the petition are true and correct to the best knowledge, information, and belief of petitioner. Any false statement under oath contained in the affidavit shall constitute perjury and shall be punishable by a fine of not more than one thousand dollars, or by imprisonment, with or without hard labor, for not more than five years, or both.

E. If a suit for divorce is pending, any application for a protective order shall be filed in that proceeding and shall be heard within the delays provided by this Part. Any decree issued in a divorce proceeding filed subsequent to a petition filed or an order issued pursuant to this Part may, in the discretion of the court hearing the divorce proceeding, supersede in whole or in part the orders issued pursuant to this Part. Such subsequent decree shall be forwarded by the rendering court to the court having jurisdiction of the petition for a protective order and shall be made a part of the record thereof. The findings and rulings made in connection with such protective orders shall not be res judicata in any subsequent proceeding.

F. A petitioner shall not be required to prepay or be cast with court costs or costs of service or subpoena for the filing of the petition or the issuance of a temporary restraining order or protective order pursuant to this Part, and the clerk of court shall immediately file and process the petition and temporary restraining order issued pursuant to this Part, regardless of the ability of the petitioner to pay court costs.

G. If the court orders the issuance of a temporary restraining order, the defendant may be cast for all costs.

#### **46:2135. 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. Any person who shows immediate and present danger of abuse shall constitute good cause for purposes of this Subsection. The court shall consider any and all past history of abuse, or threats thereof, in determining the existence of an immediate and present danger of abuse. There is no requirement that the abuse itself be recent, immediate, or present. The order may include but is not limited to the following:

- (1) Directing the defendant to refrain from abusing, harassing, or interfering with the person or employment or going near the residence or place of employment of the petitioner, the minor children, or any person alleged to be incompetent, on whose behalf a petition was filed under this Part.
- (2) Awarding to a party use and possession of specified jointly owned or leased property, such as an automobile.
- (3) Granting possession to the petitioner of the residence or household to the exclusion of the defendant, by evicting the defendant or restoring possession to the petitioner where:
  - (a) The residence is jointly owned in equal proportion or leased by the defendant and the petitioner or the person on whose behalf the petition is brought;
  - (b) The residence is solely owned by the petitioner or the person on whose behalf the petition is brought; or
  - (c) The residence is solely leased by defendant and defendant has a duty to support the petitioner or the person on whose behalf the petition is brought.
- (4) Prohibiting either party from the transferring, encumbering, or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business, or for the necessary support of the party or the minor children.
- (5) Awarding temporary custody of minor children or persons alleged to be incompetent.
- (6) Awarding or restoring possession to the petitioner of all separate property and all personal property, including but not limited to telephones or other communication equipment, computers, medications, clothing, toiletries, social security cards, birth certificates or other forms of identification, tools of the trade, checkbooks, keys, automobiles, photographs, jewelry, or any other items or personal effects of the petitioner and restraining the defendant from transferring, encumbering, concealing, or disposing of the personal or separate property of the petitioner.
- (7) Granting to the petitioner the exclusive care, possession, or control of any pets belonging to or under the care of the petitioner or minor children residing in the residence or household of either party, and directing the defendant to refrain from harassing, interfering with, abusing or injuring any pet,

without legal justification, known to be owned, possessed, leased, kept, or held by either party or a minor child residing in the residence or household of either party.

B. If a temporary restraining order is granted without notice, the matter shall be set within twenty-one days for a rule to show cause why the protective order should not be issued, at which time the petitioner must prove the allegations of abuse by a preponderance of the evidence. The defendant shall be given notice of the temporary restraining order and the hearing on the rule to show cause by service of process as required by law within twenty-four hours of the issuance of the order.

C. During the existence of the temporary restraining order, a party shall have the right to return to the family residence once to recover his or her personal clothing and necessities, provided that the party is accompanied by a law enforcement officer to insure the protection and safety of the parties.

D. If no temporary restraining order has been granted, the court shall issue a rule to show cause why the protective order should not be issued, and set the rule for hearing on the earliest day that the business of the court will permit, but in any case within ten days from the date of service of the petition, at which time the petitioner must prove the allegations of abuse by a preponderance of the evidence. The defendant shall be given notice by service of process as required by law.

E. If the hearing pursuant to Subsection B or D of this Section is continued, the court shall make or extend such temporary restraining orders as it deems necessary. Any continuance of a hearing ordered pursuant to Subsection B or D of this Section shall not exceed fifteen days, unless good cause is shown for further continuance.

F. The court may, in its discretion, grant an emergency temporary restraining order outside regular court hours.

G. Immediately upon entering a temporary restraining order, the judge shall cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall sign such order, and shall immediately forward it to the clerk of court for filing on the day that the order is issued.

H. The clerk of the issuing court shall transmit the Uniform Abuse Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court, for entry into the Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. The clerk of the issuing court shall also send a copy of the Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), or any modification thereof, to the chief law enforcement officer of the parish where the person or persons protected by the order reside by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer until otherwise directed by the court.

I. The initial rule to show cause hearing required pursuant to Subsection B or D may be conducted by a hearing officer who is qualified and selected in the same manner provided in R.S. 46:236.5(C). The

hearing officer shall be subject to the applicable limitations and shall follow the applicable procedures provided in R.S. 46:236.5(C). The hearing officer shall make recommendations to the court as to the action that should be taken in the matter.

**46:2136. Protective orders; content; modification; service**

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

- (1) Granting the relief enumerated in R.S. 46:2135.
- (2) Where there is a duty to support a party, any minor children, or any person alleged to be incompetent living in the residence or household, ordering payment of temporary support or provision of suitable housing for them, or granting possession to the petitioner of the residence or household to the exclusion of the defendant, by evicting the defendant or restoring possession to the petitioner where the residence is solely owned by the defendant and the petitioner has been awarded the temporary custody of the minor children born of the parties.
- (3) Awarding temporary custody of or establishing temporary visitation rights and conditions with regard to any minor children or person alleged to be incompetent.
- (4)(a) Ordering a medical evaluation of the defendant or the abused person, or both, to be conducted by an independent court-appointed evaluator who qualifies as an expert in the field of domestic abuse. The evaluation shall be conducted by a person who has no family, financial, or prior medical relationship with the defendant or abused person, or their attorneys of record.
- (b) If the medical evaluation is ordered for both the defendant and abused person, two separate evaluators shall be appointed.
- (c) After an independent medical evaluation has been completed and a report issued, the court may order counseling or other medical treatment as deemed appropriate.

B. A protective order may be rendered pursuant to this Part if the court has jurisdiction over the parties and subject matter and either of the following occurs:

- (1) The parties enter into a consent agreement.
- (2) Reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process.



C. Any protective order issued within this state or outside this state that is consistent with Subsection B of this Section shall be accorded full faith and credit by the courts of this state and enforced as if it were the order of the enforcing court.

D.(1) On the motion of any party, the court, after notice to the other parties and a hearing, may modify a prior order to exclude any item included in the prior order, or to include any item that could have been included in the prior order.

(2) On the motion of any party, after a hearing, the court may modify the effective period of a protective order pursuant to Paragraph (F)(2) of this Section.

E. A protective order made under this Part shall be served on the person to whom the order applies in open court at the close of the hearing, or in the same manner as a writ of injunction.

F.(1) Except as provided in Paragraph (2) of this Subsection, any final protective order or approved consent agreement shall be for a fixed period of time, not to exceed eighteen months, and may be extended by the court, after a contradictory hearing, in its discretion. Such protective order or extension thereof shall be subject to a devolutive appeal only.

(2)(a) For any protective order granted by the court which directs the defendant to refrain from abusing, harassing, or interfering with the person as provided in R.S. 46:2135(A)(1), the court may grant the order to be effective for an indefinite period of time as provided by the provisions of this Paragraph on its own motion or by motion of the petitioner. The indefinite period shall be limited to the portion of the protective order which directs the defendant to refrain from abusing, harassing, or interfering with the person as provided in R.S. 46:2135(A)(1).

(b) The hearing for this motion shall be conducted concurrently with the hearing for the rule to show cause why the protective order should not be issued.

(c) Any motion to modify the indefinite effective period of the protective order as provided in Subparagraph (a) of this Paragraph may be granted only after a good faith effort has been made to provide reasonable notice of the hearing to the victim, the victim's designated agent, or the victim's counsel, and either of the following occur:

(i) The victim, the victim's designated agent, or the victim's counsel is present at the hearing or provides written waiver of such appearance.

(ii) After a good faith effort has been made to provide reasonable notice of the hearing, the victim could not be located.

G. Immediately upon granting a protective order or approving any consent agreement, the judge shall cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall sign such order, and shall immediately forward it to the clerk of court for filing on the day that the order is issued.

H. The clerk of the issuing court shall transmit the Uniform Abuse Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court, for entry into the Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. The clerk of the issuing court shall also send a copy of the Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), or any modification thereof, to the chief law enforcement officer of the parish where the person or persons protected by the order reside by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer until otherwise directed by the court.

#### **46:2136.1. Costs paid by abuser**

A. All court costs, attorney fees, costs of enforcement and modifications proceedings, costs of appeals, evaluation fees, and expert witness fees incurred in maintaining or defending any proceeding concerning domestic abuse assistance in accordance with the provisions of this Part shall be paid by the perpetrator of the domestic violence, including all costs of medical and psychological care for the abused adult, or for any of the children, necessitated by the domestic violence.

B. However, if the court determines the petition was frivolous, the court may order the nonprevailing party to pay all court costs and reasonable attorney fees of the other party.

#### **46:2136.2. Louisiana Protective Order Registry**

A. In order to provide a statewide registry for abuse prevention orders to prevent domestic and dating violence and to aid law enforcement, prosecutors, and the courts in handling such matters, there shall be created a Louisiana Protective Order Registry administered by the Judicial Administrator's Office, Louisiana Supreme Court. The Judicial Administrator's Office shall collect the data transmitted to it from the courts of the state and enter it into the Louisiana Protective Order Registry as expeditiously as possible.

B. The Louisiana Protective Order Registry encompasses temporary restraining orders, protective orders, preliminary injunctions, permanent injunctions, and court-approved consent agreements resulting from actions brought pursuant to R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., R.S. 9:361 et seq., R.S. 9:372, Children's Code Article 1564 et seq., Code of Civil Procedure Article 3607.1, or peace bonds pursuant to Code of Criminal Procedure Article 30(B), or as part of the disposition, sentence, or bail condition of a criminal matter pursuant to Code of Criminal Procedure Articles 327.1, 335.1, 335.2, or 871.1 as long as such order is issued for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical proximity to, another person to prevent domestic abuse, stalking, or dating violence.

C. The courts of this state shall use a uniform form for the issuance of any protective or restraining order, which form shall be developed, approved, and distributed by the Judicial Administrator's Office, shall be titled the "Uniform Abuse Prevention Order".

D. The clerk of the issuing court shall immediately send a copy of the order or any modification thereof to the Louisiana Protective Order Registry and to the chief law enforcement officer of the parish in which the person or persons protected by the order reside as expeditiously as possible but no later than by the end of the next business day after the order is filed with the clerk of court. Transmittal of the Uniform Abuse Prevention Order shall be made by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court.

E. Upon formation, the registry shall immediately implement a daily process of expungement of records and names of the parties in all cases where either a temporary restraining order expires without conversion to an injunction or, after an evidentiary hearing, it is determined that a protective order is not warranted.

F. The judicial administrator's office shall make the Louisiana Protective Order Registry available to state and local law enforcement agencies, district attorney offices, the Department of Children and Family Services, office of children and family services, child support enforcement section, the Department of Health and Hospitals, bureau of protective services, the Governor's Office of Elderly Affairs, elderly protective services, the office of the attorney general, and the courts.

**46:2136.3. Prohibition on the possession of firearms by a person against whom a protective order is issued**

A. Any person against whom the court has issued a permanent injunction or a protective order pursuant to the provisions of R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2136 or 2151, Children's Code Article 1570, Code of Civil Procedure Article 3607.1, or Code of Criminal Procedure Articles 30, 327.1, 335.2, or 871.1 shall be prohibited from possessing a firearm for the duration of the injunction or protective order if both of the following occur:

(1) The permanent injunction or protective order includes a finding that the person subject to the permanent injunction or protective order represents a credible threat to the physical safety of a family member or household member.

(2) The permanent injunction or protective order informs the person subject to the permanent injunction or protective order that the person is prohibited from possessing a firearm pursuant to the provisions of 18 U.S.C. §922(g)(8) and R.S. 46:2136.3.

B. For the provisions of this Section, "firearm" means any pistol, revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon, or assault rifle which is designed to fire or is capable of firing fixed cartridge ammunition or from which a shot or projectile is discharged by an explosive.

**46:2137. Penalties; notice of penalty in order**

A. Upon violation of a temporary restraining order, a protective order, or a court-approved consent agreement, the court may hold the defendant in contempt of court and punish the defendant by imprisonment in the parish jail for not more than six months or a fine of not more than five hundred dollars, or both, and may order that all or a part of any fine be forwarded for the support of petitioner and dependents, in the discretion of the court. Such sentence shall be imposed only after trial by the judge of a rule against the defendant to show cause why he should not be adjudged guilty of contempt and punished accordingly. The rule to show cause may issue on the court's own motion, or on motion of a party to the action or proceeding, and shall state the facts alleged to constitute the contempt. A certified copy of the motion, and of the rule to show cause, shall be served upon the person charged with contempt in the same manner as a subpoena, at least forty-eight hours before the time assigned for the trial of the rule, which shall be scheduled within twenty days of the filing of the motion for contempt.

B. Each protective order issued under this Part, including a temporary ex parte order, shall have the following statement printed in bold-faced type or in capital letters:

"A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF NOT MORE THAN \$500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH, AND MAY BE FURTHER PUNISHED UNDER THE CRIMINAL LAWS OF THE STATE OF LOUISIANA. THIS ORDER SHALL BE ENFORCED BY ALL LAW ENFORCEMENT OFFICERS AND COURTS OF THE STATE OF LOUISIANA."

C. Nothing contained herein shall be construed as a limitation on any applicable provisions of the Louisiana Criminal Code.

**46:2138. Assistance; clerk of court; domestic abuse advocate**

A. The clerk of court shall make forms available for making application for protective orders under this Part, provide clerical assistance to the petitioner when necessary, advise indigent applicants of the availability of filing in forma pauperis, provide the necessary forms, as supplied by the judicial administrator's office, Louisiana Supreme Court, and provide the services of a notary, where available, for completion of the affidavit required in R.S. 46:2134(D).

B. Domestic abuse advocates may provide clerical assistance to petitioners in making an application for a protective order in accordance with this Part.

C. For purposes of this Section, "domestic abuse advocate" means an employee or representative of a community based shelter providing services to victims of family violence or domestic abuse.

#### **46:2139. Other relief not affected**

The granting of any relief authorized under this Part shall not preclude any other relief authorized by law.

#### **46:2140. Law enforcement officers; duties**

A. If a law enforcement officer has reason to believe that 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 R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 30, 327.1, 335.1, 335.2, and 871.1, the officer shall immediately arrest the abusing party.

B. If a law enforcement officer has reason to believe that a family or household member or dating partner has been abused, and the abusing party is not in violation of a restraining order, a preliminary or permanent injunction, or a protective order, the officer shall immediately use all reasonable means to prevent further abuse, including:

- (1) Arresting the abusive party with a warrant or without a warrant pursuant to Code of Criminal Procedure Article 213, if probable cause exists to believe that a felony has been committed by that person, whether or not the offense occurred in the officer's presence.
  - (2) Arresting the abusive party in case of any misdemeanor crime which endangers the physical safety of the abused person whether or not the offense occurred in the presence of the officer. If there is no cause to believe there is impending danger, arresting the abusive party is at the officer's discretion.
  - (3) Assisting the abused person in obtaining medical treatment necessitated by the battery; arranging for, or providing, or assisting in the procurement of transportation for the abused person to a place of shelter or safety.
  - (4) Notifying the abused person of his right to initiate criminal or civil proceedings; the availability of the protective order, R.S. 46:2136; and the availability of community assistance for domestic violence victims.
- C.(1) When a law enforcement officer receives conflicting accounts of domestic abuse or dating violence, the officer shall evaluate each account separately to determine if one party was the predominant aggressor.
- (2) In determining if one party is the predominant aggressor, the law enforcement officer may consider any other relevant factors, but shall consider the following factors based upon his or her observation:

- (a) Evidence from complainants and other witnesses.
  - (b) The extent of personal injuries received by each person.
  - (c) Whether a person acted in self-defense.
  - (d) An imminent threat of future injury to any of the parties.
  - (e) Prior complaints of domestic abuse or dating violence, if that history can be reasonably ascertained by the officer.
  - (f) The future welfare of any minors who are present at the scene.
  - (g) The existence of a temporary restraining order, a preliminary or permanent injunction, or a protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 2171 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 30, 327.1, 335.1, 335.2, and 871.1. The officer shall presume that the predominant aggressor is the person against whom the order was issued.
- (3)(a) If the officer determines that one person was the predominant aggressor in a felony offense, the officer shall arrest that person. The arrest shall be subject to the laws governing arrest, including the need for probable cause as otherwise provided by law.
- (b) If the officer determines that one person was the predominant aggressor in a misdemeanor offense, the officer shall arrest the predominant aggressor if there is reason to believe that there is impending danger or if the predominant aggressor is in violation of a temporary restraining order, a preliminary or permanent injunction, or a protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 30, 327.1, 335.1, 335.2, and 871.1. If there is no threat of impending danger or no violation of a temporary restraining order, a preliminary or permanent injunction, or a protective order, the officer may arrest the predominant aggressor at the officer's discretion, whether or not the offense occurred in the presence of the officer. An arrest pursuant to the provisions of this Subparagraph shall be subject to the laws governing arrest, including the need for probable cause as otherwise provided by law. The exceptions provided for in this Section shall apply.
- (4) As used in this Subsection:
- (a) "Dating violence" has the meaning as defined in R.S. 46:2151(C).
  - (b) "Domestic abuse" has the meaning as defined in R.S. 46:2132(3).

#### **46:2141. Reporting**

Whenever a law enforcement officer investigates an allegation of domestic abuse, whether or not an arrest is made, the officer shall make a written report of the alleged incident, including a statement of the complainant, and the disposition of the case.

#### **46:2142. Immunity**

Any law enforcement officer reporting in good faith, exercising due care in the making of an arrest or providing assistance pursuant to the provisions of R.S. 46:2140 and 2141 shall have immunity from any civil liability that otherwise might be incurred or imposed because of the report, arrest, or assistance provided.

#### **46:2143. Use of electronic monitoring of offenders; pilot program**

A. When a court issues any peace bond, temporary restraining order, protective order, preliminary injunction, permanent injunction or court-approved consent agreements pursuant to R.S. 46:2131 et seq., R.S. 9:361 et seq., R.S. 9:372 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure Article 3604, or as part of the disposition, sentence, or bail condition of a criminal matter pursuant to Code of Criminal Procedure Articles 327.1 or 871.1 for the purpose of preventing acts of domestic violence, the court may also order the domestic violence offender to participate in an electronic monitoring program. However, the use of electronic monitoring equipment shall be used only if the domestic abuse victim has consented to its use.

B. The court shall specify the terms of the electronic monitoring program, which shall include but is not limited to the following requirements:

(1) The device shall alert the domestic violence victim and the appropriate law enforcement agency when the domestic violence offender is within a certain distance of the protected person or protected premises, as ordered by the court. The court issuing the order shall be notified of the violation of the order by the local law enforcement agency within twenty-four hours.

(2) The device shall be worn at all times by the domestic violence offender.

(3) Equipment shall be installed or placed in the home of the offender to monitor the compliance of the offender.

(4) The offender shall be placed under the supervision of the Department of Public Safety and Corrections, or the court in misdemeanor cases, for the purposes of monitoring.

C. The cost of electronic monitoring shall be paid by the domestic violence offender.

D.(1)(a) Any court in the parishes of East Baton Rouge and Lafourche which has jurisdiction over the matters provided for in Subsection A of this Section shall be authorized to implement the provisions of this Section. No other court may do so, except as provided in Paragraph (2) of this Subsection.

(b)(i) Any court which exercises this authority shall maintain a record of the use of electronic monitoring devices, their effectiveness, any added costs that result, and any other information relevant to providing a basis for a determination of the value of the use of such devices and whether the authority to use such devices should be expanded to all courts with jurisdiction over the matters provided for in Subsection A of this Section.

(ii) All records required in Item (i) of this Subparagraph shall be submitted to the Judicial Council in a manner and at a time required by the council. The Judicial Council shall review all such records and study any recommendation submitted by the courts with the records and determine whether the authority to use such devices should be expanded to all courts with relevant jurisdiction for use in appropriate matters.

(2) At the conclusion of such study and upon a determination that the authority should be expanded, the pilot continued, or the authority revoked and the use discontinued, the Judicial Council shall advise all relevant courts. This determination shall provide the authority for the use or discontinuation of the use of such devices until the Judicial Council determines otherwise.

### PART III. DOMESTIC VIOLENCE PREVENTION COMMISSION

#### **46:2145. Creation; purpose and duties of the commission**

A. The Domestic Violence Prevention Commission is hereby created within the Department of Children and Family Services.

B. The commission shall:

(1) Assist local and state leaders in developing and coordinating domestic violence programs.

(2) Conduct a continuing comprehensive review of all existing public and private domestic violence programs to identify gaps in prevention and intervention services and to increase coordination among public and private programs to strengthen prevention and intervention services.

(3) Make recommendations with respect to domestic violence prevention and intervention.

(4) Develop a state needs assessment and a comprehensive and integrated service delivery approach that meets the needs of all domestic violence victims.

(5) Establish a method to transition domestic violence service providers toward evidence-based national best practices focusing on outreach and prevention.



(6) Develop a plan that ensures state laws on domestic violence are properly implemented and provides training to law enforcement and the judiciary.

(7) Develop a framework to collect and integrate data and measure program outcomes.

C. The commission shall annually issue a report of its findings and recommendations to the governor, the speaker of the House of Representatives, and the president of the Senate. The commission shall issue its initial report on or before February 1, 2015, and no later than the first day of February each year thereafter. The report may include any recommendations for legislation that it deems necessary and appropriate. Legislation may be recommended by the commission only upon approval by a two-thirds vote of the commission members present.

#### CHAPTER 28-A. PROTECTION FROM DATING VIOLENCE ACT

##### **46:2151. Dating violence**

A. A victim of a dating partner, as defined in Subsection B, shall be eligible to receive all services, benefits, and other forms of assistance provided by Chapter 28 of this Title.

B. For purposes of this Section, "dating partner" means any person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(1) The length of the relationship.

(2) The type of relationship.

(3) The frequency of interaction between the persons involved in the relationship.

C. For purposes of this Section, "dating violence" includes but is not limited to physical or sexual abuse and any offense against the person as defined in the Criminal Code of Louisiana, except negligent injury and defamation, committed by one dating partner against the other.

#### CHAPTER 28-B. HUMAN TRAFFICKING VICTIMS

##### **46:2161. Human trafficking victims services plan**

A. With respect to children found to be victims of human trafficking, the Department of Children and Family Services, in conjunction with the Department of Health and Hospitals, shall develop a plan for the delivery of services to victims of human trafficking. Such plan shall include provisions for:

(1) Identifying victims of human trafficking in Louisiana.

(2) Assisting victims of human trafficking with applying for federal and state benefits and services to which they may be entitled.

(3) Coordinating the delivery of health, mental health, housing, education, job training, child care, victims' compensation, legal, and other services to victims of human trafficking.

(4) Preparing and disseminating educational and training programs and materials to increase awareness of human trafficking and services available to victims of human trafficking among local departments of social services, public and private agencies and service providers, and the public.

(5) Referring child victims to the appropriate community-based services for victims of human trafficking.

(6) Assisting victims of human trafficking with family reunification or return to their place of origin, if the victims so desire.

B. In developing the plan, the departments shall work together with such other state and federal agencies, public and private entities, and other stakeholders as they deem appropriate.

C. Each private entity that provides services to victims pursuant to the provisions of this Section shall submit to the Department of Children and Family Services an annual report on their operations including information on the services offered, geographic areas served, the number of persons served, and individual status updates on each person served. This information shall not include the name, address, or other identifying information of the person served. The Department of Children and Family Services shall compile the data from all the reports submitted pursuant to the provisions of this Subsection and shall provide this information to the legislature on or before the first day of February each year.

#### **46:2161.1. Human trafficking victims services plan; adults**

A. With respect to persons referred to the Department of Children and Family Services who are eighteen years of age or older and who are found to be victims of human trafficking in which the services include commercial sexual activity or any sexual conduct constituting a crime under the laws of this state, the department shall refer the person to the appropriate department, agency, or entity to provide the person with the following:

(1) Assist the victim in applying for federal and state benefits and services to which the victim may be entitled.

(2) Coordinate the delivery of health, mental health, housing, education, job training, child care, victims' compensation, legal, and other services available to victims of human or sex trafficking.

(3) Refer the victim to the appropriate community-based services to the extent that such services are available.

(4) Assist the victim with family reunification or returning to the victim's place of origin, if the victim so desires.

B. In coordinating these services for the victim, the department shall work together with such other state and federal agencies, public and private entities, and other stakeholders as they deem appropriate.

C. Each private entity that provides services to victims pursuant to the provisions of this Section shall submit to the Department of Children and Family Services an annual report on their operations including information on the services offered, geographic areas served, the number of persons served, and individual status updates on each person served. This information shall not include the name, address, or other identifying information of the person served. The Department of Children and Family Services shall compile the data from all the reports submitted pursuant to the provisions of this Subsection and shall provide this information to the legislature on or before the first day of February each year.

#### **46:2162. Assistance to victims of human trafficking**

A. Classification of victims of human trafficking. As soon as practicable after the initial encounter with a person who reasonably appears to a law enforcement agency, a district attorney's office, or the office of the attorney general to be a victim of human trafficking, such agency or office shall:

(1) Notify the Crime Victims Services Bureau of the Department of Public Safety and Corrections that such person may be eligible for services under this Chapter.

(2) Make a preliminary assessment of whether such victim or possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking as defined in the federal Trafficking Victims Protection Act (22 U.S.C. 7101 et seq.) or appears to be otherwise eligible for any federal, state, or local benefits and services.

(a) If it is determined that the victim or possible victim appears to meet such criteria, then the agency or office shall report the finding to the victim and shall refer the child victim to appropriate services available, including legal services providers.

(b) If the victim or possible victim is under the age of eighteen or is an adult in need of protective services pursuant to the provisions of the Adult Protective Services Act, the agency or office shall also notify the appropriate protective service agency.

B. Law enforcement assistance with respect to immigration.

(1) After the agency or office makes a preliminary assessment pursuant to Paragraph (A)(2) of this Section that a victim or possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking as defined in the federal Trafficking Victims Protection Act, and upon the request of such victim, the agency or office shall provide the victim or possible victim of

human trafficking with a completed and executed United States Citizenship and Immigration Services (USCIS) Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Human Trafficking in Persons, or a USCIS Form I-918, Supplement B, U Nonimmigrant Status Certification, or both. These forms shall be completed by the certifying officer in accordance with the forms' instructions and applicable rules and regulations.

(2) The victim or possible victim of human trafficking may choose which form to have the certifying officer complete.

#### **46:2163. Civil cause of action for victims of human trafficking**

An individual who is a victim of human trafficking shall have a civil cause of action in district court for injunctive relief and to recover actual damages, compensatory damages, punitive damages, and for any other appropriate relief. A prevailing plaintiff shall also be awarded court costs and attorney fees. Treble damages shall be awarded on proof of actual damages where the defendant's actions were willful and malicious.

### **CHAPTER 28-C. PROTECTION FROM STALKING ACT**

#### **46:2171. Statement of purpose**

The legislature hereby finds and declares that there is a present and growing need to develop innovative strategies and services which will reduce and treat the trauma of stranger and acquaintance stalking. The nature of stalking allegations are sometimes not easily substantiated to meet the prosecution's burden of proving the case beyond a reasonable doubt, and victims of stalking are left without protection. Orders of protection are a proven deterrent that can protect victims of stalking from further victimization; however, many victims are forced to pursue civil orders of protection through ordinary process, often unrepresented, rather than through a shortened, summary proceeding. Additionally, victims of stalking are not always aware of the vast resources available to assist them in recovering from the trauma associated with being a victim of stalking. It is the intent of the legislature to provide a civil remedy for victims of stalking that will afford the victim immediate and easily accessible protection.

##### **46:2171.1. Jurisdiction**

Any district court in the state of Louisiana which is empowered to hear civil matters shall have jurisdiction over proceedings appropriate to it under this Chapter.

#### **46:2172. Definitions**

As used in this Chapter, "stalking" means any act that would constitute the crime of stalking under R.S. 14:40.2 or cyberstalking under R.S. 14:40.3.

#### **46:2173. Protection from stalking**

A victim of stalking by a perpetrator who is a stranger to or acquaintance of the victim shall be eligible to receive all services, benefits, and other forms of assistance provided by Chapter 28 of this Title, provided the services, benefits, and other forms of assistance are applicable based on the status of the relationship between the victim and perpetrator.

#### **46:2174. Assistance to victims of stalking**

A person who is engaged in any office, center, or institution referred to as a rape crisis center or battered women's shelter, who has undergone at least forty hours of training and who is engaged in rendering advice, counseling, or assistance to victims may provide the assistance provided for in R.S. 46:2138 to a victim of stalking.

### **CHAPTER 21. CRIME VICTIMS REPARATIONS**

#### **46:1801. Short title**

This Chapter may be cited as the Crime Victims Reparations Act.

#### **46:1802. Definitions**

As used in this Chapter:

- (1) "Accessory" includes an accessory after the fact and also a principal, as those terms are defined by the Louisiana Criminal Code.
- (2) "Board" means the Crime Victims Reparations Board.
- (3) "Child" means an unmarried person under eighteen years of age, and includes a natural child, adopted child, stepchild, child born outside of marriage, any of the above who is a student not over twenty-three years of age, and a child conceived prior to but born after the personal injury or death of the victim.

(4) "Claimant" means a victim or a dependent of a deceased victim, or the legal representative of either, an intervenor, or in the event of a death, a person who legally assumes the obligation or who voluntarily pays the medical or the funeral or burial expenses incurred as a direct result of the crime.

(5) "Collateral source" means a source of benefits for pecuniary loss awardable, other than under this Chapter, which the claimant has received or which is readily available to him or her from any or all of the following:

(a) The offender under an order of restitution to the claimant imposed by a court as a condition of probation or otherwise.

(b) The United States or a federal agency, a state or any of its political subdivisions, or an instrumentality of two or more states.

(c) Social Security, Medicare, and Medicaid.

(d) Workers' compensation.

(e) Wage continuation programs of an employer.

(f) Proceeds of a contract of insurance payable to the claimant for pecuniary loss sustained by the claimant by reason of the crime.

(g) A contract providing prepaid hospital and other health care services, or benefits for disability.

(6) "Dependent" means a spouse or any person who is a dependent of a victim within the meaning of Section 152 of the United States Internal Revenue Code (26 USC §152).

(7) "Intervenor" means a person who goes to the aid of another and is killed or injured in the good faith effort to prevent a crime covered by this Chapter, to apprehend a person reasonably suspected of having engaged in such a crime, or to aid a peace officer. "Peace officer" shall include commissioned police officers, sheriffs, deputy sheriffs, marshals, deputy marshals, correctional officers, constables, wildlife enforcement agents, and probation and parole officers.

(8) "Pecuniary loss" means the amount of expense reasonably and necessarily incurred by reason of personal injury, as a consequence of death, or a catastrophic property loss, and includes:

(a) For personal injury:

(i) Medical, hospital, nursing, or psychiatric care or counseling, and physical therapy.

(ii) Actual loss of past earnings and anticipated loss of future earnings because of a disability resulting from the personal injury or the receipt of medically indicated services by a child victim related to the personal injury.

(iii) Care of a child or dependent.

- (iv) Counseling or therapy for the parents or siblings of a child who is the victim of a sexual crime.
- (v) Loss of support for a child victim of a sexual crime not otherwise compensated for as a pecuniary loss for personal injury.
- (b) As a consequence of death:
  - (i) Funeral, burial, or cremation expenses.
  - (ii) Loss of support to one or more dependents not otherwise compensated for as a pecuniary loss for personal injury.
  - (iii) Care of a child or children enabling the surviving spouse of a victim or the legal custodian or caretaker of the deceased victim's child or children to engage in lawful employment, where that expense is not otherwise compensated for as a pecuniary loss for personal injury.
  - (iv) Counseling or therapy for any surviving family member of the victim or any person in close relationship to such victim.
  - (v) Crime scene cleanup.
- (c) As to catastrophic property loss, the loss must be so great as to cause overwhelming financial effect on the victim or other claimant and shall be restricted to loss of abode.
- (d) Any other expense associated with the collection and securing of crime scene evidence.
- (8.1) "Pecuniary loss" does not include loss attributable to pain and suffering.
- (9) "Reparations" means payment of compensation in accordance with the provisions of this Chapter for pecuniary loss resulting from physical injury, death, or catastrophic property loss by reason of a crime enumerated in this Chapter.
- (10) "Victim" means:
  - (a) Any person who suffers personal injury, death, or catastrophic property loss as a result of a crime committed in this state and covered by this Chapter. This includes any person who is a victim of human trafficking as defined by R.S. 14:46.2, a victim of trafficking of children for sexual purposes as defined by R.S. 14:46.3, or a victim of any offense involving commercial sexual exploitation including but not limited to R.S. 14:81.1, 81.3, 82, 82.1, 82.2, 83, 83.1, 83.2, 83.3, 83.4, 84, 85, 86, 89.2, 104, 105, and 282.
  - (b) A Louisiana resident who is a victim of an act of terrorism, as defined in 18 U.S.C. 2331, occurring outside the United States.
  - (c) A Louisiana resident who suffers personal injury or death as a result of a crime described in R.S. 46:1805, except that the criminal act occurred outside of this state. The resident shall have the same rights under this Chapter as if the act had occurred in this state upon a showing that the state in which the act occurred does not have an eligible crime victims reparations program and the crime would have

been compensable had it occurred in Louisiana. In this Subparagraph, "Louisiana resident" means a person who maintained a place of permanent abode in this state at the time the crime was committed for which reparations are sought.

#### **46:1803. Crime Victims Reparations Board**

A. The Crime Victims Reparations Board is created and established under the jurisdiction of the Louisiana Commission on Law Enforcement and Administration of Criminal Justice in the office of the governor. The board shall be domiciled in Baton Rouge.

B. The board shall be composed of the executive director of the Louisiana Commission on Law Enforcement and Administration of Criminal Justice or his designee, one person, who shall be chosen and appointed by the governor, from a list of three recommendations submitted to the governor by any victim's rights advocacy organization which is recognized as a nonprofit with the Internal Revenue Service, incorporated or organized in the state of Louisiana and in good standing, and does not engage in political activity, with each organization submitting a list of three names, and nine members who shall be appointed by the governor for a term concurrent with that of the governor. However, no person nominated by any victim's rights advocacy organization shall be appointed to serve as a member of the board who has previously been confirmed by the Senate and has served as a member of the board. Each appointment shall be submitted to the Senate for confirmation. At least one member shall be appointed from each of the congressional districts in the state. Of the governor's nine appointees, at least one shall be a full voting member who shall be sixty years of age or over and shall serve as a representative of the elderly population of Louisiana.

C. A vacancy in the membership of the board shall be filled by appointment by the governor.

D. Members shall serve without compensation, but shall be paid a per diem not in excess of seventy-five dollars and shall be reimbursed for travel expenses incurred in attendance at meetings of the board and other expenses incurred on business of the board at its direction.

E. A majority of the members of the board shall constitute a quorum for the transaction of all business.

F. The members of the board shall annually elect from their membership a chairman and a vice chairman.

#### **46:1804. Eligibility to apply for reparations**

A. A person who believes he is a victim of a crime enumerated in R.S. 46:1805, or his legal representative, or in the case of death, a dependent or the legal representative of a dependent, or the rightful claimant as defined in R.S. 46:1802(4), shall be eligible to make application to the board for



reparations and shall be eligible for an award of reparations in accordance with the provisions of this Chapter.

B. During the sentencing for a crime, the judge shall inform the victim of the crime, or his legal representative, or in the case of death, a dependent or the legal representative of a dependent or the rightful claimant, of the potential eligibility for an award of reparations. The judge shall also provide the contact information for the Crime Victims Reparations Board to such persons for submitting an application to the board for an award of reparations.

#### **46:1805. Crimes to which Chapter applies**

A. The board may make an award and order the payment of reparations for pecuniary loss in accordance with the provisions of this Chapter for personal injury, death, or catastrophic property loss resulting from any act or omission to act that is defined as a misdemeanor under any local ordinance or as a crime under state or federal law and involves the use of force or the threat of the use of force or any human trafficking-related offense.

B.(1) For the purposes of this Chapter, the operation of a motor vehicle, boat, or aircraft that results in personal injury or death shall not constitute a crime unless the personal injury or death was intentionally inflicted through the use of such vehicle, boat, or aircraft, or was caused by an operator in violation of R.S. 14:98, 98.1, or 100.

(2) "Intentionally inflicted" includes, but is not limited to personal injury or death resulting due to operation of a motor vehicle, boat, or aircraft used to flee the scene of a crime in which the operator of the motor vehicle, boat, or aircraft knowingly participated.

(3) "Human trafficking-related offense" shall include the perpetration or attempted perpetration of R.S. 14:46.2 or 46.3 or any other crime involving commercial exploitation including R.S. 14:81.1, 81.3, 82, 82.1, 82.2, 83, 83.1, 83.2, 83.3, 83.4, 84, 85, 86, 89.2, 104, 105, and 282.

C. For the purposes of this Chapter, a person shall be deemed to have committed a criminal act or omission notwithstanding that by reason of age, insanity, drunkenness, or other reason he was legally incapable of committing a crime.

#### **46:1806. Application; requirements; confidentiality**

A.(1) An application for reparations shall be filed in writing with the board within one year after the date of the personal injury, death, or catastrophic property loss or within such longer period as the board determines is justified by the circumstances. The application shall be valid only if the act resulting in the personal injury, death, or catastrophic property loss was reported to the appropriate law enforcement officers within seventy-two hours after the date of the personal injury, death, or

catastrophic property loss, or within such longer period as the board determines is justified by the circumstances.

(2)(a) Notwithstanding the provisions of Paragraph (1) of this Subsection and except as provided in Subparagraph (b) of this Paragraph, an application filed by a dependent or legal representative of a deceased victim of a homicide offense, or filed by a claimant as defined in R.S. 46:1802(4), shall be filed within five years after the date on which the judgment of conviction becomes final or within five years after the date on which the supreme court denies the defendant's first application for appeal.

(b) Notwithstanding the provisions of Paragraph (1) of this Subsection, when the death of the offender occurs prior to a conviction for a homicide offense, an application filed by a dependent or legal representative of a deceased victim of a homicide offense, or filed by a claimant as defined in R.S. 46:1802(4), shall be filed within five years after the date of the death of the offender.

B. Application shall be made on a form prescribed and provided by the board, which shall contain at least the following:

(1) A description of the date, nature, and circumstances of the act or acts resulting in the physical injury, death, or catastrophic property loss, and of the crime, if known.

(2) A complete financial statement, including the cost of medical care or funeral, burial, or cremation expenses, the loss of wages or support, and the extent of the property loss, if any, which the claimant has incurred or will incur and the extent to which the claimant has been indemnified for these expenses from any collateral source.

(3) Where appropriate, a statement indicating the extent of any disability resulting from the injury incurred.

(4) An authorization permitting the board or its representatives to verify the contents of the application.

(5) Such other information as the board may require.

C. The following information, when submitted to the board as part of an application, shall be confidential:

(1) Documents submitted by a claimant which relate to medical treatment.

(2) Law enforcement investigative reports.

D. Records, documents, and information in the possession of the board received pursuant to a law enforcement investigation or a verification of application by a law enforcement agency shall be considered investigative records of a law enforcement agency as described in R.S. 44:3 and shall not be disseminated under any condition without the permission of the agency providing the record or information to the board.

**46:1807. Powers and duties of board; staff**

A. The board shall administer the provisions of this Chapter and shall be responsible, in accordance with this Chapter, for determining all matters pertaining to applications for reparations, investigations, and determinations based upon its findings, the granting or rejecting of claims, and fixing the amounts of such grants or payments and the methods of their payment.

B. In the performance of its powers and duties the board shall:

- (1) Prescribe, distribute, and otherwise make available forms for use in making application for reparations.
- (2) Prepare and distribute pamphlets, informational materials, and application forms, and otherwise assist in making the residents of the state aware of the provisions of this Chapter.
- (3) Receive, verify, and process applications for reparations.
- (4) Hold such hearings, take such testimony, and make such investigations as are necessary with respect to any application received by it.
- (5) Make a written decision with respect to each application received by it and order payment of reparations to victims in accordance with this Chapter.
- (6) Take such other actions and perform such other functions as are required by this Chapter or necessary to accomplish its purposes.

C. The board also may:

- (1) Promulgate rules and regulations necessary to carry out its business or the provisions of this Chapter.
- (2) Through its chairman or acting chairman administer oaths or affirmations to persons appearing before it, send for papers, documents, and records, and subpoena witnesses.
- (3) Appoint committees, including advisory committees.
- (4) Use the services, personnel, facilities, and information, including recommendations, estimates, and statistics, of federal agencies and those of state and local public agencies and private institutions, with or without reimbursement therefor.
- (5) Request such information, data, and reports from any federal agency as the board may require and as may be produced consistent with law.

D.(1) The Louisiana Commission on Law Enforcement and Administration of Criminal Justice shall provide the office space and personnel necessary to carry out the functions of the board and effectuate

the purposes of this Chapter. In addition, to the extent that funds are appropriated or otherwise available therefor, the board may employ personnel including experts required in connection with particular applications before it.

(2) The sheriff of each parish and the criminal sheriff of the parish of Orleans shall carry out the policies, decisions, and orders of the board and shall provide the office space and personnel in their respective parishes necessary to effectuate the purposes of this Chapter.

E. Upon request of the board, each state agency or institution shall make available, to the greatest practical extent, its services, equipment, personnel, facilities, and information, including recommendations, estimates, and statistics.

F. The board shall maintain a current record of the laws relating to crime victims reparations in other states and territories of the United States. The board need not keep a current record of laws in other countries. Upon request, the board shall assist Louisiana residents to determine if they meet the criteria specified in R.S. 46:1802(10)(b).

#### **46:1808. Procedure by the board; public hearings; right to counsel**

A. Upon receipt of one or more applications for reparations resulting from the same crime, the board shall examine the application to determine that it is complete and shall schedule all of such claims for consideration at the same time. If the board determines that a hearing is necessary to a decision in the matter, it shall fix the day, time, and place thereof and shall notify the claimant or claimants and such other persons as have indicated a desire to be present or that the board desires to hear. The notice shall be in writing and shall be mailed by certified mail at least ten days prior to the day fixed for the hearing.

B. Hearings shall be open to the public unless in a particular case the board determines that all or part of the hearing should be closed, taking into consideration the fact that an accused has not been convicted or that a closed hearing is in the best interest of the victim. The applicant may appear and be heard and present evidence on his own behalf or through counsel or legal representative. Any person who has a substantial interest in the proceedings, as determined by the board, may appear before the board and shall have the right to introduce evidence and cross examine witnesses.

C. The members of the board and the attorney representing the board, if any, may question and cross examine witnesses. The board may bring before it physicians or other experts to examine any claimant. The board may receive in evidence any statement, document, information, or matter that it believes may contribute to the purposes of the hearing or to any of its deliberations, whether or not a hearing is held and whether or not any of them would be admissible in court.

**46:1809. Criteria for making awards; prohibitions; authority to deny or reduce awards**

A. The board shall order the payment of reparations in an amount determined by it if, with or without hearings, it finds by a preponderance of the evidence that pecuniary loss was sustained by the victim or other claimant by reason of personal injury, death, or catastrophic property loss suffered by the victim and that such loss was proximately caused by a crime enumerated in R.S. 46:1805 and that such pecuniary loss has or will not be compensated from any collateral or other source.

B. In making its determination, the following provisions shall apply:

(1) A finding by the board, for purposes of considering an application for award under this Chapter, that the commission of a crime enumerated in R.S. 46:1805(A) resulted in a pecuniary loss covered by this Chapter shall be a sufficient finding with respect to the crimes giving rise to the application for a reparations award. However, the board may make a partial eligibility determination on an application prior to the incurring of a pecuniary loss by the victim or other claimant. An order for reparations may be made whether or not any person is arrested, prosecuted, or convicted of the crime giving rise to the application for reparations. The board may suspend proceedings in the interest of justice if a civil or criminal action arising from such act or omission constituting the crime is pending or imminent.

(2) Conviction of an offender of a crime giving rise to the application for reparations under this Chapter shall be conclusive evidence that the crime was committed.

(3) No award of reparations shall be made if the board finds that:

(a) The crime was not reported within the time specified by R.S. 46:1806(A).

(b) The claimant failed or refused to cooperate substantially with the reasonable requests of appropriate law enforcement officials.

(c) Reparations may substantially enrich the offender.

(d) The claimant was the offender or an accessory, or that an award to the claimant would unjustly benefit any of them. However, such ineligibility shall not apply if the claimant is a victim of human trafficking or trafficking of children for sexual purposes.

(e) The claim was not filed timely, as provided by R.S. 46:1806(A).

(f) Repealed by Acts 1991, No. 409, §2.

(g) The crime was committed prior to the effective date of this Chapter.

(4) The board may deny or reduce an award:

(a) If it finds that the behavior of the victim at the time of the crime giving rise to the claim was such that the victim bears some measure of responsibility for the crime that caused the physical injury, death, or catastrophic property loss or for the physical injury, death, or catastrophic property loss. However,

such ineligibility shall not apply if the claimant is a victim of a human trafficking-related offense as defined by R.S. 46:1805.

(b) To the extent that the pecuniary loss is recouped from collateral or other sources.

(c) If it finds that the vehicle operated by the victim was without security as required by R.S. 32:861.

(d) If it finds that the victim was not wearing a safety belt in compliance with R.S. 32:295.1.

(e) If it finds that the victim was a willing passenger in a motor vehicle, boat, or aircraft that was operated by an individual who was in violation of R.S. 14:98 or 98.1.

(5) No reparations of any kind shall be awarded under this Chapter to a victim who is injured or killed while confined in any state, parish, or city jail, prison, or other correctional facility as a result of a conviction of any crime. However, if, prior to a conviction, the victim was injured or killed while incarcerated, the board may deny reparations if it is subsequently determined that the victim was guilty of the offense which resulted in his incarceration.

C. No victim or dependent shall be denied reparations solely because he or she is a relative of the offender or was living with the offender at the time of the injury or death. However, reparations may be awarded to a victim or dependent who is a relative, family or household member of the offender at the time of the award only if it can be reasonably determined that the offender will receive no substantial economic benefit or unjust enrichment from the award.

#### **46:1810. Amount of reparations award**

A. Awards payable under this Chapter shall not exceed ten thousand dollars in the aggregate for all claims arising out of the same crime except for those victims who are permanently, totally, or permanently and totally disabled as a result of the crime, the aggregate award shall not exceed twenty-five thousand dollars.

B. In no case shall the total aggregate of awards given during any fiscal year to claimants residing in the same parish exceed the total amount of costs levied, collected, and remitted by that parish to the Louisiana Commission on Law Enforcement and Administration of Criminal Justice as required by R.S. 46:1816(D) for the preceding two fiscal years prior to the date of the crime to which this Chapter applies, or ten thousand dollars, whichever is greater. This Subsection shall not apply if the board determines that a qualified claimant would suffer severe and undue hardship if economic relief is not provided.

**46:1811. Reparation order; terms and conditions**

A. The board may order the payment of an award in a lump sum or in installments. That part of an award equal to the amount of the pecuniary loss accrued to the date of the award shall be paid in a lump sum. In all other respects the board shall determine all matters respecting the payment of awards, consistent with the provisions of this Chapter.

B.(1) The board shall deduct from any payments it orders any amounts received from any collateral source.

(2) If a claimant receives payment from a collateral source after receiving an award from the Crime Victims Reparations Fund, then to the extent the total amount received exceeds the actual loss experienced the claimant shall reimburse the Crime Victims Reparations Fund, through the board.

C. The state treasurer shall pay to the person named in the order of payment of reparations the amount named therein in accordance with the provisions of such order.

D. The board shall not be subject to garnishment, execution, or attachment on any award.

**46:1812. Finality of decision**

A decision or order of the board with respect to any application or claim for reparations shall be subject to review in accordance with the provisions of Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950.

**46:1813. Emergency awards**

A. If it appears to the board prior to its taking action on a claim that an award likely will be made and that undue hardship will result to the claimant if no immediate economic relief is provided, the board may make an emergency award to the claimant pending its final decision in the case. The amount of an emergency award shall not exceed five hundred dollars.

B. The amount of any emergency award shall be deducted from any final award made to the claimant receiving the emergency award. The claimant shall repay to the board the excess of the emergency award over the final award, or the full amount if no final award is made. However, the board may waive all or part of the repayment if in its judgment repayment would cause severe financial hardship.

**46:1814. Effect of reparations award on right to recover damages in civil action; repayment of award**

A. An order for reparations payments under this Chapter shall not affect the right of any person to institute a civil suit to recover damages for the personal injury, death, or catastrophic property loss from any other person. However, if damages in a civil action are recovered, from the offender or any other third party, the person shall reimburse the Crime Victims Reparations Fund, through the board, in an amount equal to the amount of the reparations award or such lesser amount as is recovered in damages in the civil action.

B. When any person who has received an award from the board files a civil action to recover damages, he shall, at the time of the filing of the suit, notify the board and the attorney general.

**46:1815. Recovery from the criminal**

A. Whenever any person is convicted of a crime and an order for the payment of reparations is or has been made under this Chapter for a personal injury, death, or catastrophic property loss resulting from the act or omission constituting the crime for which conviction was had, the attorney general, within one year after the date on which the judgment of conviction becomes final, may institute a civil action against the convicted person for the recovery of all or any part of the reparations payment. The suit shall be instituted in the district court having jurisdiction in the parish in which such person resides or is found or, in Orleans Parish, in the civil district court for that parish. The court shall have jurisdiction to hear, determine, and render judgment in any such action. Any amount recovered under this Subsection shall be deposited in the state treasury and, after meeting the requirements of Article VII, Section 9 of the Constitution of Louisiana, credited to the Crime Victims Reparations Fund hereinafter created. If an amount greater than that paid pursuant to the order for payment of reparations is recovered and collected in any such action, the board shall pay the balance to the claimant.

B. The board shall provide the attorney general with such information, data, and reports as he may require to institute actions in accordance with this Section.

**CHAPTER 21-B. RIGHTS OF CRIME VICTIMS AND WITNESSES**

**46:1841. Legislative intent**

In recognition of the civic and moral duty of victims and witnesses of crime to cooperate fully and voluntarily with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislature declares its intent, in this Chapter, to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity, and that the rights extended in this Chapter to victims and witnesses



of crime are honored and protected by the law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protection afforded the criminal defendants.

#### **46:1842. Definitions**

In this Chapter:

- (1) "Crime" means an act defined as a felony, misdemeanor, or delinquency under state law.
  - (1.1) "Crime victim who is a minor" means a person under the age of eighteen against whom any of the following offenses have been committed:
    - (a) Any homicide or any felony offense defined or enumerated in R.S. 14:2(B).
    - (b) Any sexual offense.
    - (c) The offenses of vehicular negligent injuring and first degree vehicular negligent injuring.
- (2) "Critical stage" means any judicial proceeding at which there is a disposition of the charged offense or a lesser offense, or a sentence imposed pursuant thereto.
- (3) "Designated family member" means a family member or legal guardian of the victim who is a minor, a homicide victim, or a victim who is unable to exercise his rights hereunder due to a serious disability. The designated family member shall be selected by a majority of the victim's family members, and shall be afforded all of the rights accruing to victims under this Chapter. A substitution of the designated family member may be made upon agreement by the majority of the victim's family members. In specific cases, the court or the district attorney may allow more than one designated family member.
- (4) "Inmate" means a person convicted of a felony.
- (5) "Judicial agency" means the district court and officers thereof, including the judge, the prosecutor, and the clerk of court, the Crime Victims Reparations Board, the Department of Public Safety and Corrections, and the division of probation and parole.
- (6) "Judicial proceeding" means any contradictory proceeding held in open court.
- (7) "Law enforcement agency" means the sheriff, constable, or police force as defined by law, and the Department of Public Safety and Corrections.
- (8) "Registration" means the completion of a form which is filed with the law enforcement agency investigating the offense of which the person is a victim, as specified in R.S. 46:1844(T), which shall include an address and telephone number at which the victim or designated family member may be notified. Such forms shall be promulgated by the Louisiana Commission on Law Enforcement and Administration of Criminal Justice in accordance with R.S. 46:1844(R).

(9) "Victim" means a person against whom any of the following offenses have been committed:

(a) Any homicide, or any felony offense defined or enumerated in R.S. 14:2(B).

(b) Any sexual offense.

(c) The offenses of vehicular negligent injuring and first degree vehicular negligent injuring.

(d) Any offense against the person as defined in the Criminal Code committed against a family or household member as defined in R.S. 46:2132(4) or dating partner as defined in R.S. 46:2151(B).

(10) "Victim notice and registration form" means a form promulgated by the Louisiana Commission on Law Enforcement and Administration of Criminal Justice in accordance with R.S. 46:1844(R) and distributed by a judicial or law enforcement agency on which a victim or witness or a family member of a victim or witness may indicate a request that he be afforded the rights prescribed in this Chapter or other criminal statutes relative to a crime of which he or a family member was a victim or witness.

(11) "Victim's family" includes a spouse, parent, child, stepchild, sibling, or legal representative of the victim, except when the person is in custody for an offense or is the defendant.

(12) "Witness" means any person who has been or is expected to testify for the prosecution, or who, by reason of having relevant information, is subject to call or likely to be called as a witness for the prosecution, whether or not any action or proceeding has yet been commenced.

#### **46:1843. Eligibility of victims**

A victim has the rights and is eligible for the services under this Chapter only if the victim reported the crime to law enforcement authorities within seventy-two hours of its occurrence or discovery, unless extenuating circumstances exist for later reporting.

#### **46:1844. Basic rights for victim and witness**

A. Services and information concerning services available to victims and witnesses of a crime.

(1) The appropriate law enforcement agency shall ensure that crime victims and witnesses receive emergency, social, and medical services as soon as possible. The appropriate law enforcement agency shall also distribute to the victim or to the family of a homicide victim a victim notice and registration form promulgated by the Louisiana Commission on Law Enforcement and Administration of Criminal Justice in conformity with Subsection R of this Section.

(2) The Department of Public Safety and Corrections shall maintain the Crime Victims Services Bureau presently in operation. The bureau shall publicize and provide a way for crime victims and their family members to be kept informed about the following:

(a) Successful court appeals.

(b) Parole board or pardon board hearings or other release hearings.

(c) Information regarding dates of possible release from physical custody, escape, apprehension, or otherwise.

(d) Inquiries concerning the department's policies and programs for inmates.

(3) All law enforcement agencies having custody of those accused or convicted of the offenses enumerated in R.S. 46:1842(9) shall, pursuant to Article I, Section 25 of the Constitution of Louisiana, notify crime victims or designated family members who have properly registered concerning an accused's or a defendant's arrest, release on recognizance, posting of bond, release pending charges being filed, release due to rejection of charges by the district attorney, escape, or re-apprehension.

B. Advance notification to victim, or designated family member concerning judicial proceedings; right to be present. If requested by registering with the appropriate law enforcement or judicial agency as outlined in Subsection T of this Section, the clerk of court shall provide reasonable notice to a victim, or a designated family member of judicial proceedings relating to their case. The notice required pursuant to this Subsection may be made by any method reasonably calculated to notify the victim or designated family member of the judicial proceeding in a timely manner.

C. Interviewing the victim and witness of a crime.

(1) The district attorney, prior to trial, shall make reasonable efforts to interview the victim or designated family member to determine the facts of the case and whether the victim or the family is requesting restitution.

(2) All law enforcement or judicial agencies shall provide a private setting for all interviewing of victims of crime. "Private setting" shall mean an enclosed room from which the occupants are not visible or otherwise identifiable and whose conversations cannot be heard from outside such room. Only those persons directly and immediately related to the interviewing of the victim, specifically the victim, a social worker, psychologist, or other professional, the victim advocate designated by the sheriff's office, or a representative from a not-for-profit victim service organization, including but not limited to rape crisis centers, domestic violence advocacy groups, and alcohol abuse or substance abuse groups providing emotional support to the victim, shall be present, unless the victim requests the exclusion of such person from the interview, and, when appropriate, the parent or parents of the victim.

(3) The victim and the victim's family may refuse any requests for interviews with the attorney for the defendant or any employee or agent working for the attorney for the defendant. If the victim is a minor, the parent or guardian of the victim may refuse to permit the minor to be interviewed by the attorney for the defendant or any employee or agent working for the attorney for the defendant. Before any victim may be subpoenaed to testify on behalf of a defendant at any pretrial hearing, the defendant shall show good cause at a contradictory hearing with the district attorney why the subpoena should be

issued. Willful disregard of the rights of victims and witnesses as enumerated in this Paragraph may be punishable as contempt of court.

D. Consultation with the victim or the designated family member.

(1) The victim or the designated family member shall have the right to retain counsel to confer with law enforcement and judicial agencies regarding the disposition of the victim's case. The prosecutor may confer with the counsel retained by the victim or designated family member in the prosecution of the case. "Case" herein shall mean a criminal matter in which formal charges have been filed by the district attorney's office.

(2) Upon written notification to the district attorney's office received from the victim, or the designated family member, the district attorney's office shall, within a reasonable period of time following such notification, contact the victim and schedule a conference with the victim or a designated family member in order to obtain their view, either orally or in writing, regarding:

(a) The disposition of the criminal case by dismissal, plea, or trial.

(b) The use of available sentencing alternatives such as incarceration, probation, community service, and the payment of restitution to the victim.

E. Notification to employers. The victim or witness who so requests shall be assisted by judicial and law enforcement agencies in informing employers that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of the victim or witness from work.

F. Notification of scheduling changes. Each victim or witness who has been scheduled to attend a criminal justice proceeding shall be notified as soon as possible by the agency scheduling his or her appearance of any change in scheduling which shall affect his or her appearance.

G. The victim and witness in the court setting. The court shall provide, whenever possible, a secure waiting area during court proceedings which does not require victims, witnesses, or homicide victims' families to be in close proximity to the defendants, or their families or friends, and shall provide a secure waiting area in cases involving violent crimes.

H. Presentence or postsentence reports. If properly registered with the clerk of court, the victim or designated family member shall have the right to review and comment on the presentence or postsentence reports relating to the crime against the victim. The trial court shall regulate when and how the presentence report is provided to the victim or designated family member. The Department of Public Safety and Corrections shall regulate how the postsentence report is provided to the victim or designated family member.

I. Rules governing evidence and criminal procedure. The victim shall be protected at all times by all rules and laws governing the criminal procedure and the admissibility of evidence applicable to criminal proceedings.

J. Speedy disposition. The victim shall have the right to a speedy disposition and prompt and final conclusion of the case after conviction and sentencing. When ruling on a defense motion for continuance, the court shall consider the impact on the victim.

K. Right of victim or designated family member to be present and heard at all critical stages of the proceedings.

(1)(a) At all critical stages of the prosecution, if the victim or designated family member has registered with the appropriate law enforcement or judicial agency and is present, the court shall determine if the victim or designated family member wishes to make a victim impact statement. If the victim is not present, the court shall ascertain whether the victim or designated family member has requested notification and, if so, whether proper notice has been issued to the victim or designated family member, in accordance with Subsection B of this Section, by the clerk of court or by the district attorney's office. If notice has been requested and proper notice has not been issued, the court shall continue the proceedings until proper notice is issued.

(b) The victim and victim's family members shall have the right to make a written and oral victim impact statement as follows:

(i) Any written statement shall be made available to the state and the defendant and shall be made part of the record. The statement may be submitted by the district attorney upon request of the victim or designated family member. Upon request of the victim or designated family member, any such written statement may be sealed by the court after review by the parties.

(ii) The hearing at which an oral statement is provided to the court shall be subject to the limitations of relevance. In any case where the number of victim's family members exceeds three, the court may limit the in-court statements it receives from them to a fewer number of statements. The court may otherwise reasonably restrict the oral statement in order to maintain courtroom decorum. The defendant must be present for the victim impact statement. Upon motion of the state, the court may hear any such statement in camera.

(2) The statement of the victim or the victim's family may:

(a) Identify the victim of the offense.

(b) Itemize any economic loss that has been or may be reasonably suffered by the victim as a result of the offense.

(c) Identify any physical injury suffered by the victim as a result of the offense, along with its seriousness and permanence.

(d) Describe any change in the victim's personal welfare or familial relationships as a result of the offense.

(e) Identify any request for medical or counseling services needed by the victim or the victim's family as a result of the offense.

(f) Contain any other information related to the impact of the offense upon the victim or the victim's family that the trial court requires.

(g) Contain any other information that the victim or victim's family wishes to share with the court regarding the overall effect of the crime upon the victim and the victim's family.

(3)(a) Prior to the sentencing hearing, the court shall provide the counsel for the defendant, the victim, and the attorney for the state with notice of the maximum and minimum sentence allowed by law. The court shall allow the victim, or designated family member, and the prosecutor the opportunity to review any presentence investigation reports that have been prepared relating to the victim's case. The review of the presentence report shall be conducted under the supervision of the court.

(b) At the sentencing hearing, the court shall afford the counsel for the defendant, the attorney for the state, and the victim or designated family member an opportunity to comment upon matters relating to the appropriate sentence. Before imposing sentence, the court shall verify that the victim or designated family member was notified of the sentencing hearing and address the victim or designated family member personally, if the victim or designated family member is present at the sentencing hearing, to determine if the victim or designated family member wishes to present a written and oral impact statement pursuant to this Chapter.

L. Return of property to victim or family of victim. All judicial and law enforcement agencies shall expeditiously return any stolen or other personal property to victims or victims' families when no longer needed as evidence.

M. Victims' right to seek restitution.

(1) If the defendant is found guilty, the court or parole board shall require the defendant to pay restitution to the appropriate party in an amount and manner determined by the court. In addition, the court or parole board may require the defendant to perform community service work in an amount and according to a schedule determined by the court.

(2) One of the conditions of work release shall be a requirement that an inmate pay from his earnings all restitution ordered by the court or the parole board. Even if no restitution has been ordered, the sheriff or director of the program shall have the right to require payment of restitution as a condition of work release.

(3) A victim shall not be required to pay recording fees for the filing of a restitution order with the clerk of court. The defendant shall be responsible for all costs associated with this action.

N. Duties of the Department of Public Safety and Corrections.

(1) In cases where the sentence is the death penalty, the victim's family shall have the right to be notified by the Department of Public Safety and Corrections of the time, date, and place of the execution, and a minimum of two representatives of the victim's family shall have the right to be present.

(2) Upon filing of a victim notice and registration form by a victim or a family member, or a witness, it shall be the duty of the Department of Public Safety and Corrections, corrections services, at the time of the appeal, discharge, or parole of an inmate including a juvenile inmate, to notify the victim, family member, or witness, by certified mail of such appeal or release. Such form shall be included in the prisoner's commitment documents to be delivered to the warden of any state correctional facility where such prisoner has been committed or transferred.

(3) In the event of an escape or absconding by an inmate including a juvenile inmate, from any facility under the jurisdiction of the Department of Public Safety and Corrections, corrections services, it shall be the duty of the department to immediately notify the victim, family member of the victim, or witness, at the most current address or phone number on file with the department, of the escape by the most reasonable and expedient means possible. If the inmate is recaptured, the department shall send notice within forty-eight hours of regaining custody of the inmate. In no case shall the state be held liable for damages for any failure to provide notice pursuant to this Section.

(4) When an inmate in physical custody is within three months of his earliest projected release date, a registered victim may contact the Crime Victims Services Bureau of the Department of Public Safety and Corrections, corrections services, to request a current photograph of the inmate. The department shall take all reasonable steps to provide a photograph to the registered victim at least ten days prior to the inmate's actual release.

O. Notification of pardon or parole. The Board of Pardons or the Board of Parole, respectively, shall notify the victim or the victim's family and the appropriate district attorney that a hearing has been set for the person convicted of the crime against the victim. The victim or victim's family shall have the right to make written and oral statements as to the impact of the crime at any hearing before either board and to rebut any statements or evidence introduced by the inmate or defendant. The victim or the victim's family, a victim advocacy group, and the district attorney or his representative may also appear before either board in person or by means of telephone communication from the office of the local district attorney.

P. Notification concerning missing children. All law enforcement agencies shall expeditiously investigate all reports of missing children and shall inform the family members of such children of the status of the investigation.

Q. Victim assistance education and training. Victim assistance education and training shall be offered to persons taking courses at law enforcement training facilities.

R. Preparation of victim notice and registration forms. The Louisiana Commission on Law Enforcement and Administration of Criminal Justice shall cause to be promulgated uniform victim notice and

registration forms which outline and explain the rights and services established by this Chapter. This information shall be updated as necessary. The costs of developing the victim notice and registration form shall be funded by the Louisiana Commission on Law Enforcement and Administration of Criminal Justice.

S. Failure to comply. No sentence, plea, conviction, or other final disposition shall be invalidated because of failure to comply with the provisions of this Section.

T. Registration with the appropriate law enforcement or judicial agency.

(1) In order for a victim or designated family member to be eligible to receive notices hereunder and exercise the rights provided in this Chapter, the victim or designated family member must complete a form promulgated by the Louisiana Commission on Law Enforcement and Administration of Criminal Justice. The form shall be completed by the victim or designated family member and shall be filed with the law enforcement agency investigating the offense of which the person is a victim, as defined in this Chapter. The completed victim notice and registration form shall be included in the documents sent by the law enforcement agency to the district attorney for prosecution. The district attorney shall include the completed victim notice and registration form with any subsequent bill of information or indictment that is filed with the clerk of court. Upon conviction, the victim notice and registration form shall be included in the documents sent by the clerk of court to the Department of Public Safety and Corrections, the law enforcement agency having custody of the defendant, or the division of probation and parole.

(2) All victim notice and registration forms, and the information contained therein, shall be kept confidential by all law enforcement and judicial agencies having possession. The information shall be used only for the purposes required by this Chapter, and shall be released only upon court order after contradictory hearing.

(3) The victim and designated family member shall have the right to register with the appropriate agency at any time and exercise prospectively the rights guaranteed by this Chapter.

U. No cause of action. Nothing in this Section shall be construed as creating a cause of action by or on behalf of any person for an award of costs or attorney fees, for the appointment of counsel for a victim, or for any cause of action for compensation or damages against the state of Louisiana, a political subdivision, a public agency, or a court, or any officer, employee, or agent thereof. Nothing in this Chapter precludes filing for a writ of mandamus as provided in the Code of Civil Procedure to compel the performance of a ministerial duty required by law.

V. Crime victim's assistance hotline. In furtherance of the purposes of this Section, a statewide crime victim's assistance hotline may be established. The Crime Victims Reparations Board along with the Louisiana Commission on Law Enforcement and Administration of Criminal Justice shall jointly operate the hotline and periodically review the criteria and implementation procedures of said hotline.

W. Confidentiality of crime victims who are minors, victims of sex offenses, and victims of human trafficking-related offenses.



(1)(a) In order to protect the identity and provide for the safety and welfare of crime victims who are minors under the age of eighteen years and of victims of sex offenses or human trafficking-related offenses, notwithstanding any provision of law to the contrary, all public officials and officers and public agencies, including but not limited to all law enforcement agencies, sheriffs, district attorneys, judicial officers, clerks of court, the Crime Victims Reparations Board, and the Department of Children and Family Services or any division thereof, shall not publicly disclose the name, address, or identity of crime victims who at the time of the commission of the offense are minors under eighteen years of age or of victims of sex offenses or human trafficking-related offenses, regardless of the date of commission of the offense. The confidentiality of the identity of the victim who at the time of the commission of the offense is a minor under eighteen years of age or the victim of a sex offense or human trafficking-related offense may be waived by the victim. The public disclosure of the name of the juvenile crime victim by any public official or officer or public agency is not prohibited by this Subsection when the crime resulted in the death of the victim.

(b) In order to protect the identity and provide for the safety and welfare of crime victims who are minors under the age of eighteen years and of victims of sex offenses or human trafficking-related offenses, notwithstanding any provision of law to the contrary, an attorney for any party shall be prohibited from publicly disclosing, except during trial, the name, address, or identity of crime victims who at the time of the commission of the offense are under eighteen years of age or are victims of sex offenses or human trafficking-related offenses, regardless of the date of commission of the offense. An attorney may lawfully utilize initials, abbreviations, or other forms of indefinite descriptions on documents used in the performance of their duties to prevent the public disclosure of the name, address, or identity of such crime victims. If the name, address, or identity of such a crime victim must be disclosed in a motion or pleading, that motion or pleading shall be filed with the court requesting that it be kept under seal. Failure to comply with the provisions of this Subparagraph shall be punishable as contempt of court.

(c) Notwithstanding the provisions of Subparagraphs (a) and (b) of this Paragraph, all information regarding juvenile crime victims that is required by a child abduction alert system which assists law enforcement in the successful resolution of child abduction cases, such as the AMBER Alert network, shall be made available to such alert system as quickly as possible.

(2) For purposes of this Section:

(a) "Human trafficking-related offense" shall include the perpetration or attempted perpetration of R.S. 14:46.2 or 46.3 or any other crime involving commercial sexual exploitation including R.S. 14:81.1, 81.3, 82, 82.1, 82.2, 83, 83.1, 83.2, 83.3, 83.4, 84, 85, 86, 89.2, 104, 105, and 282.

(b) "Sex offense" shall include the perpetration or attempted perpetration of stalking (R.S. 14:40.2), misdemeanor carnal knowledge of a juvenile (R.S. 14:80.1), obscenity (R.S. 14:106), or any offense listed in R.S. 15:541(24).

(3) Notwithstanding any other provision of law to the contrary, all public officials, officers, and public agencies, including but not limited to all law enforcement agencies, sheriffs, district attorneys, judicial

officers, clerks of court, the Crime Victims Reparations Board, and the Department of Children and Family Services or any division thereof, charged with the responsibility of knowing the name, address, and identity of crime victims who are minors or of crime victims of a sex offense or a human trafficking-related offense as a necessary part of their duties shall have full and complete access to this information regarding a crime victim who is a minor or a victim of a sex offense or a human trafficking-related offense. Either prior to or at the time of a request for information, the public official or officer or public agency shall take measures to prevent the public disclosure of the name, address, or identity of such a crime victim who is a minor or a victim of a sex offense or human trafficking-related offense, which may include the use of initials, abbreviations, or any other form of concealing the identity of the victim on all public documents.

(4) The provisions of this Subsection shall not apply to the requirement of promptly informing a defendant or his attorney of the name of the victim of a sexual crime during pretrial discovery.

#### **46:1846. Communication between offender and victim prohibited; exceptions**

A. A person who has been charged by bill of information or indictment with any crime of violence as defined in R.S. 14:2, or any immediate family member of such person, shall be prohibited from communicating, either by electronic communication, in writing, or orally, with a victim of the offense, or any of his immediate family members for which the person has been charged or for which disposition of the case is pending.

B. The provisions of Subsection A of this Section shall apply to communication between the offender or his immediate family member and the victim, or any of his immediate family members, unless the provisions of Paragraphs (1) and (2) of this Subsection are satisfied.

(1) The victim consents to the communication through the local prosecuting agency.

(2) The communication is made through the counsel of the offender, counsel's staff or representative, or the offender himself if he is representing himself at trial.

C. A person who has been sentenced for a crime of violence as defined in R.S. 14:2, or any immediate family member of such person, shall be prohibited from communicating, either by electronic communication, in writing, or orally, with a victim of the offense, or any of his immediate family members, for which the person has been sentenced unless the victim or his immediate family members initiate the communication through the Department of Public Safety and Corrections, and it is agreed that the victim and the offender participate in a formally defined restorative justice program administered through the department.

D. For purposes of this Section, "immediate family member" means the spouse, mother, father, aunt, uncle, sibling, or child of the offender, whether related by blood, marriage, or adoption.

E. Whoever violates the provisions of this Section shall be fined not more than five hundred dollars, imprisoned for not more than six months, or both.