

SENATE BILL NO. 36

BY SENATORS AMEDEE, CHABERT, JOHNS, MORRELL, GARY SMITH AND THOMPSON AND REPRESENTATIVES BADON, BURRELL, CARMODY, CONNICK, EDWARDS, GISCLAIR, HAVARD, HONORE, HOWARD, LEGER, MORENO, ALFRED WILLIAMS AND WILLMOTT

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

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AN ACT

To amend and reenact Code of Criminal Procedure Articles 327.1 and 335.1(A)(1)(a) and (c), R.S. 14:79(A)(1)(a) and (E), R.S. 44:4.1(B)(31), and R.S. 46:236.5(C)(3)(k) and 2136.2(A) and (B), and to enact Chapter 28-D of Title 46 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 46:2181 through 2188 and Code of Criminal Procedure Article 335.1(A)(1)(d), relative to protective orders for victims of sexual assault; to enact the Protection for Victims of Sexual Assault Act; to provide for legislative intent; to make sexual assault victims eligible for the same services, benefits, and assistance available to persons under the Domestic Abuse Assistance Act, the Protection from Dating Violence Act, and the Protection from Stalking Act; to provide for jurisdiction and venue; to authorize the clerk of court to provide certain forms of clerical assistance to sexual assault victims; to authorize sexual assault advocates to provide certain forms of assistance to sexual assault victims; to provide relative to orders issued as a condition of bail for certain offenses involving sexual assault; to require such orders to be transmitted to the Louisiana Protective Order Registry; to provide relative to the court's authority to prohibit a defendant from possessing a firearm as a condition of bail for certain offenses

1 involving domestic abuse, stalking, or sexual assault; to provide relative to violation
2 of protective orders issued pursuant to the Protection for Victims of Sexual Assault
3 Act; to provide relative to privileged communications and records; to authorize
4 hearing officers to make recommendations on stalking and sexual assault protective
5 orders; to provide definitions; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Code of Criminal Procedure Articles 327.1 and 335.1(A)(1)(a) and (c) are
8 hereby amended and reenacted and Code of Criminal Procedure Article 335.1(A)(1)(d) is
9 hereby enacted to read as follows:

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

11 If, as part of a bail restriction, an order is issued for the purpose of preventing
12 violent or threatening acts or harassment against, or contact or communication with
13 or physical proximity to, another person for the purpose of preventing domestic
14 abuse, stalking, ~~or dating violence,~~ or sexual assault, the judge shall cause to have
15 prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall
16 sign such order, and shall forward it to the clerk of court for filing by the end of the
17 next business day after the order is issued. The clerk of the issuing court shall
18 transmit the Uniform Abuse Prevention Order to the Judicial Administrator's Office,
19 Louisiana Supreme Court, for entry into the Louisiana Protective Order Registry, as
20 provided in R.S. 46:2136.2(A), by facsimile transmission or direct electronic input
21 as expeditiously as possible, but no later than the end of the next business day after
22 the order is filed with the clerk of court. The clerk of the issuing court shall also send
23 a copy of the Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C),
24 or any modification thereof, to the chief law enforcement officer of the parish where
25 the person or persons protected by the order reside by facsimile transmission or
26 direct electronic input as expeditiously as possible, but no later than the end of the
27 next business day after the order is filed with the clerk of court. A copy of the
28 Uniform Abuse Prevention Order shall be retained on file in the office of the chief
29 law enforcement officer until otherwise directed by the court.

30 * * *

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

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

17 * * *

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

26 (d) If, as part of a bail restriction, an order is issued pursuant to the
 27 provisions of this Paragraph and the alleged offense is sexual assault as defined
 28 in R.S. 46:2184, the court may order that the defendant be prohibited from
 29 possessing a firearm for the duration of the Uniform Abuse Prevention Order.
 30 For the purposes of this Subsubparagraph, "firearm" means any pistol,

1 revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon,
2 or assault rifle that is designed to fire or is capable of firing fixed cartridge
3 ammunition or from which a shot or projectile is discharged by an explosive.

4 * * *

5 Section 2. R.S. 14:79(A)(1)(a) and (E) are hereby amended and reenacted to read
6 as follows:

7 §79. Violation of protective orders

8 A.(1)(a) Violation of protective orders is the willful disobedience of a
9 preliminary or permanent injunction or protective order issued pursuant to R.S. 9:361
10 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., **R.S.**
11 **46:2181 et seq.**, Children's Code Article 1564 et seq., Code of Civil Procedure
12 Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 327.1, 335.1,
13 335.2, and 871.1 after a contradictory court hearing, or the willful disobedience of
14 a temporary restraining order or any ex parte protective order issued pursuant to R.S.
15 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq.,
16 criminal stay-away orders as provided for in Code of Criminal Procedure Articles
17 327.1, 335.1, 335.2, Children's Code Article 1564 et seq., or Code of Civil Procedure
18 Articles 3604 and 3607.1, if the defendant has been given notice of the temporary
19 restraining order or ex parte protective order by service of process as required by
20 law.

21 * * *

22 E.(1) Law enforcement officers shall use every reasonable means, including
23 but not limited to immediate arrest of the violator, to enforce a preliminary or
24 permanent injunction or protective order obtained pursuant to R.S. 9:361, R.S. 9:372,
25 R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., **R.S. 46:2181 et seq.**,
26 Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and
27 3607.1, or Code of Criminal Procedure Articles 327.1, 335.1, 335.2, and 871.1 after
28 a contradictory court hearing, or to enforce a temporary restraining order or ex parte
29 protective order issued pursuant to R.S. 9:361, R.S. 9:372, R.S. 46:2131 et seq., R.S.
30 46:2151, R.S. 46:2171 et seq., **R.S. 46:2181 et seq.**, Children's Code Article 1564

1 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal
2 Procedure Articles 327.1, 335.1, and 335.2 if the defendant has been given notice of
3 the temporary restraining order or ex parte protective order by service of process as
4 required by law.

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

11 Section 3. R.S. 46:236.5(C)(3)(k) and 2136.2(A) and (B) are hereby amended and
12 reenacted and Chapter 28-D of Title 46 of the Louisiana Revised Statutes of 1950,
13 comprised of R.S. 46:2181 through 2188, is hereby enacted to read as follows:

14 §236.5. Expedited process for establishment of paternity and establishment or
15 enforcement of support; **hearing officers**

16 * * *

17 C. An expedited process for the establishment of paternity and the
18 establishment and enforcement of support and other related family and domestic
19 matters in district courts using hearing officers may be implemented as follows:

20 * * *

21 (3) The hearing officer shall act as a finder of fact and shall make written
22 recommendations to the court concerning any domestic and family matters as set
23 forth by local court rule, including but not limited to the following matters:

24 * * *

25 (k) Hear and make recommendations on all protective orders filed in
26 accordance with R.S. 46:2131 et seq., R.S. 46:2151 et seq., **R.S. 46:2171 et seq.**,
27 **R.S. 46:2181 et seq.**, and the Children's Code and on all injunctions filed in
28 accordance with R.S. 9:361 **et. seq.**, 371, and 372 and Code of Civil Procedure
29 Articles 3601 et seq., which involve personal abuse, terrorizing, stalking, or
30 harassment; and hear and make recommendations on all motions for contempt of

1 court and motions to extend, modify, or dissolve protective orders and injunctions.

2 * * *

3 §2136.2. Louisiana Protective Order Registry

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

12 B. The Louisiana Protective Order Registry encompasses temporary
13 restraining orders, protective orders, preliminary injunctions, permanent injunctions,
14 and court-approved consent agreements resulting from actions brought pursuant to
15 R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., R.S. 46:2181 et seq., R.S.
16 9:361 et seq., R.S. 9:372, Children's Code Article 1564 et seq., Code of Civil
17 Procedure Article 3607.1, or peace bonds pursuant to Code of Criminal Procedure
18 Article 30(B), or as part of the disposition, sentence, or bail condition of a criminal
19 matter pursuant to Code of Criminal Procedure Articles 327.1, 335.1, 335.2, or 871.1
20 as long as such order is issued for the purpose of preventing violent or threatening
21 acts or harassment against, contact or communication with, or physical proximity to,
22 another person to prevent domestic abuse, stalking, ~~or dating violence, or sexual~~
23 assault.

24 * * *

25 CHAPTER 28-D. PROTECTION FOR VICTIMS OF SEXUAL ASSAULT ACT

26 §2181. Legislative purpose

27 A. The legislature hereby finds and declares that sexual assault is a
28 major public health problem and a violation of human rights that affects many
29 women and men at some time in their lives. These effects range from threats of
30 violence or actual violence to the daily limitations that the fear of violence places

1 on victims' lives. The ripple effect of sexual assault threatens the peace, order,
2 health, safety, and general welfare of the state and its residents.

3 B. According to the Centers for Disease Control and Prevention,
4 approximately one in five women and one in seventy-one men have experienced
5 rape in their lifetime. Rape is recognized as the most under-reported crime, and
6 victims of rape and other forms of sexual assault who do not report the crime
7 still desire safety and protection from future interactions with the offender.
8 Additionally, in some cases the rape or other sexual assault is reported but not
9 prosecuted, as the nature of such allegations are sometimes not easily
10 substantiated to meet the prosecution's burden of proving guilt beyond a
11 reasonable doubt. In such cases, the victims of sexual assault are left without
12 protection.

13 C. Orders of protection are a proven deterrent that can protect victims
14 of sexual assault from further victimization. However, many victims are forced
15 to pursue civil orders of protection through ordinary process, often
16 unrepresented, rather than through a shortened summary proceeding.
17 Additionally, victims of sexual assault are not always aware of the vast
18 resources available to assist them in recovering from the trauma associated with
19 being a victim of sexual assault.

20 D. It is the intent of the legislature to provide a civil remedy for all
21 victims of sexual assault that will afford the victim immediate and easily
22 accessible protection.

23 §2182. Short title

24 This Chapter shall be known and may be cited as the "Protection for
25 Victims of Sexual Assault Act".

26 §2183. Protection from sexual assault; temporary restraining order

27 A. A victim of sexual assault as defined by R.S. 46:2184, perpetrated by
28 a person who is either unknown to the victim or who is an acquaintance of the
29 victim, shall be eligible to receive all services, benefits, and other forms of
30 assistance provided by Chapter 28 of this Title.

1 **B. For persons who are eligible, under the provisions of this Chapter, to**
 2 **seek a temporary restraining order pursuant to the provisions of R.S. 46:2135,**
 3 **a showing that the person is or has been a victim of sexual assault shall**
 4 **constitute good cause for purposes of obtaining a temporary restraining order**
 5 **in an ex parte proceeding.**

6 **§2184. Definitions**

7 **For purposes of this Chapter, "sexual assault" means any nonconsensual**
 8 **sexual contact including but not limited to any act provided in R.S. 15:541(24)**
 9 **or obscenity (R.S. 14:106).**

10 **§2185. Jurisdiction; venue**

11 **A. Any district court in the state of Louisiana that is empowered to hear**
 12 **civil matters shall have jurisdiction over proceedings appropriate to it under**
 13 **this Chapter.**

14 **B. Venue under this Chapter lies:**

15 **(1) In the parish where the victim resides.**

16 **(2) In the parish where the defendant resides.**

17 **(3) In the parish where the sexual assault is alleged to have been**
 18 **committed.**

19 **§2186. Assistance; clerk of court; sexual assault advocate**

20 **A. The clerk of court shall make forms available for making application**
 21 **for protective orders under this Chapter, provide clerical assistance to the**
 22 **petitioner when necessary, notify indigent applicants of the availability of filing**
 23 **in forma pauperis, provide the necessary forms, as supplied by the judicial**
 24 **administrator's office, Louisiana Supreme Court, and provide the services of a**
 25 **notary, where available, for completion of the affidavit required in R.S.**
 26 **46:2134(D).**

27 **B. Sexual assault advocates may provide clerical assistance to petitioners**
 28 **in making an application for a protective order in accordance with this Chapter.**

29 **C. For purposes of this Section, "sexual assault advocate" means a**
 30 **person who is engaged by any office, center, or institution referred to as a sexual**

1 assault or rape crisis center or similar program, and who has undergone at least
2 forty hours of training and who is engaged in rendering advice, counseling,
3 advocacy, or assistance to victims.

4 §2187. Privileged communications and records

5 A. For purposes of this Section:

6 (1) "Privileged communication" means a communication made to a
7 representative or employee of a sexual assault center by a victim. It also means
8 a communication not otherwise privileged made by a representative or
9 employee of a sexual assault center to a victim in the course of rendering
10 services authorized by R.S. 46:2186.

11 (2) "Sexual assault center" means a program established and accredited
12 in accordance with the standards set by the Louisiana Foundation Against
13 Sexual Assault.

14 (3) "Victim" means a person against whom an act of attempted or
15 perpetrated sexual assault was committed.

16 B. Notwithstanding any other provision of law, no person shall be
17 required to disclose, by way of testimony or otherwise, a privileged
18 communication, or to produce any records, documentary evidence, opinions, or
19 decisions relating to such privileged communication, in connection with any
20 civil or criminal proceeding.

21 C. Records relating to a privileged communication maintained by a
22 sexual assault center shall not be public records, but such records may be used
23 for the compilation of statistical data if the identity of the victim and the
24 contents of any privileged communication are not disclosed.

25 §2188. Other relief not affected

26 The granting of any relief authorized under this Chapter shall not
27 preclude any other relief authorized by law.

28 Section 4. R.S. 44:4.1(B)(31) is hereby amended and reenacted to read as follows:

29 §4.1. Exceptions

30 * * *

1 B. The legislature further recognizes that there exist exceptions, exemptions,
 2 and limitations to the laws pertaining to public records throughout the revised
 3 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
 4 limitations are hereby continued in effect by incorporation into this Chapter by
 5 citation:

* * *

7 (31) R.S. 46:56, 236.1.1 through 238, 284, 286.1, 439.1, 446.1, 1073, 1355,
 8 1806, 1844, 1845, 1923, 2124.1, 2134, **2187**, 2356, 2416, 2603, 2625, 2685

* * *

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____