

## **2018 LEGISLATIVE SESSION NEW DOMESTIC VIOLENCE LAWS**

### HISTORY OF DOMESTIC VIOLENCE FIREARM LEGISLATION

Louisiana began its efforts to disarm domestic abusers in 2014. La. R.S. 46:2136.3 prohibits the possession of a firearm for the duration of a protective order issued to protect a family member or household member. Dating partners were added in 2015. Also in 2014, La. R.S. 14:49.10 was enacted to prohibit the possession of a firearm for 10 years following the completion of a sentence for a first and subsequent offense of Domestic Abuse Battery. A new crime of Battery of Dating Partner was enacted in 2017 and the prohibition on possession of a firearm was revised to include a second and subsequent conviction of dating partner battery.

In the 2016 session, legislation failed to pass to “enforce” the firearm prohibitions, that is, to order prohibited possessors to relinquish or transfer their firearms and have their concealed carry permits suspended.

In 2018, Sen. JP Morrell, at the request of the UW Public Policy Committee, on the recommendation of the Louisiana Commission to Prevent Domestic Violence, and using a methodology used in part by the LaFourche Parish Sheriff’s Office, carried one of the most comprehensive bills in the nation to disarm abusers. Additionally, Rep. Pat Smith carried bills which disarmed certain stalkers following convictions and certain defendants during felony prosecutions.

### SUMMARY OF 2018 DOMESTIC VIOLENCE FIREARM TRANSFER LEGISLATION

1. A judge shall order in open court the suspension of a concealed carry permit and order a defendant to transfer all firearms and to a sheriff within 48 hours of the court’s issuance of a PO or a conviction of DAB or BDP. The defendant shall state in court or in an affidavit the number and location of all firearms and complete an information form which includes the number of firearms, serial numbers, and their location which the court shall submit to the local sheriff or the sheriff of the parish of the defendant’s residence. The sheriff then must prepare a proof of transfer form which the defendant must file within five days with the clerk of court.
2. To effect a transfer, a sheriff can approve a qualified third party who does not reside with the defendant to hold the firearms. The sheriff can contract with a storage facility or store the firearms for a fee. The sheriff can also oversee the legal sale of any firearms through a licensed firearm dealer. The sheriff must provide a receipt, signed by both the defendant and the sheriff, to the defendant.

3. To regain possession of a transferred firearm or to lift the suspension of a concealed carry permit, the defendant must file a motion in court. If the person is found eligible to possess firearms under both state and federal law, the court can issue an order of return. Upon return, all records pertaining to any transferred firearms must be destroyed.

### “LIE AND TRY” LEGISLATION

1. Since 2012, it has been a crime to lie on a background check in an attempt to purchase a firearm or ammunition. There was no provision, however, governing reporting or prosecution, but there was a penalty of imprisonment, with or without hard labor, for not less than one and not more than five years.
2. New law now requires a NICS denial to be reported by a firearm dealer to the sheriff in the parish where the attempted purchase occurred and also to LAVNS to notify a victim. Whoever is found to have “lied and tried” can be imprisoned with or without hard labor for up to 20 years. (And, based on the Waffle House shooting in Tennessee during the session, the sheriffs’ association asked for an additional new law which provides for the imprisonment of not more than one year to anyone who transfers a firearm to a prohibited possessor.)
3. If a person is found to be unlawfully in possession of a firearm following a DAB or a BDP conviction, the imprisonment penalty is raised from not more than five years to not more than 20 years without the benefit of probation, parole or suspension of sentence.

### STALKING CONVICTIONS

1. Stalking is a crime of violence and requires a psychiatric evaluation as part of any sentence following a conviction.
2. A PO may be issued following a stalking conviction upon motion of the court or the DA to protect the victim. A PO upon motion of the court or the DA can be for an indefinite period. A PO must be issued during probation following a stalking conviction.
3. In both cases, the POs must contain firearm prohibitions and the order must be filed in the Louisiana Protective Order Registry.

### PROTECTION DURING PROSECUTION

1. A provision in the Victims Rights Act (46:1846) already prohibited communications between a defendant and the defendant’s immediate family members and the victim and the victim’s immediate family members during prosecution of “crime of violence” and following conviction. The problem with this statute is that it was simply statutory and applied only to crimes of violence. DAB and BDP are not crimes of violence.

2. The 2018 revision extends the prohibition to felony offenses perpetrated upon a FM, HHM or DP and requires the issuance of a Uniform Order of Protection from Abuse to be issued, at a minimum, to protect the victim and the victim's children. The PO creates a presumption that the D poses a threat of danger to the victim and prohibits firearm possession for the duration of the PO which must be submitted to LPOR.
3. Violations will be prosecuted under the criminal VPO statute. This will go a long way towards encouraging victims to cooperate in prosecutions without fear of coercion, retaliation and intimidation.

### STRICTER PENALTIES FOR ABUSERS

1. VPO with a battery and any act of DAB or BDP which causes serious bodily injury are now enumerated crimes of violence with an up to 8 year add-on penalty.
2. Any act of DAB or BDP which is perpetrated upon a known pregnant woman, in the presence of children, by strangulation or burning is now a felony with an up to 3 year add-on penalty.
3. Violators of a civil protective order issued under the DAAA will be prosecuted under the criminal VPO statute.
4. These are huge changes. In 2014, a second conviction of DAB became a felony. In 2015, family members were added as victims of DAB. In 2017, dating partners and same sex couples became recognizable victims of DV (with dating partners getting their own crime – Battery of a Dating Partner. All defendants must complete a 26 week Domestic Abuse Intervention Program. Prior acts of DAB and BDP are reciprocal prior convictions. Prior acts of domestic abuse are admissible in criminal prosecutions.

### PROTECTING CHILDREN FROM ABUSIVE PARENTS

1. The child custody factors were enacted in 1988 had not been changed since 1993, and in 2018, Louisiana remained the only state in the nation that did not have domestic violence as a factor to be considered in awarding custody and visitation. We have had Post Separation Family Violence and Relief Act (PSFVRA) on the books since 1992 but since it was in Title 9, judges and family law judges did not know it was to be applied in concert with the Civil Code Art. 134 factors in cases of family violence.
2. 2018 made huge changes.
3. The potential for a child to be abused is now the primary consideration in determining the best interest of a child.
4. A court shall now consider a parent's history of substance abuse, violence or any criminal activity.

5. A court shall consider mental and physical health of each party, but evidence that an abused parent suffers from the effects of abuse by the other parent cannot be grounds from denying that parent custody.
6. A party with a reasonable concern for the child's safety due to abusive, reckless or illegal conduct while in the care of the other parent will not be factored against a concerned parent who elects not to facilitate and encourage a close relationship with the other parent.
7. Reference to the PSFVRA (9:364) and Restriction on Visitation (9:341) is included in a new part "B" in art. 134. These two statutes must be applied in all cases where there is a history of family violence, domestic abuse or sexual assault or when abuse of a child has been permitted despite an ability to prevent it.
8. Under a new Code of Evidence statute, prior acts of FV, DA or SA are now admissible in any civil proceeding.
9. A parent who has sexually assaulted or permitted such assault of a child (or stepchild) will be prohibited from all contact and communication with the child. Visitation can be awarded only after treatment and an assessment of the parent's mental health, the possibility of repeating the assault, whether visitation is in the best interest of the child and would not cause emotional or psychological damage to the child. Risks of harm must be minimized, including allowing only supervised visitation with order not to remove the court from the court's jurisdiction without court approval.
10. A parent who has a history of family violence, domestic abuse or sexual abuse triggers a presumption prohibiting sole or joint custody of a child. Supervised visitation only is allowed until completion of a 26-week domestic abuse intervention program or sexual abuse program, proof of no alcohol or drug abuse, and the best interest of the child considering the 134 factors favor visitation because the other parent's behaviors are negatively affecting the child.
11. If both parents have a history of family violence, the court may award custody to the parent least likely to continue FV following treatment or may award custody to a third party with whom the child has been living and who can provide a wholesome and stable environment.