

**UNITED AGAINST DOMESTIC VIOLENCE  
NEW DOMESTIC VIOLENCE LAWS  
2014, 2015, 2016 & 2017 LEGISLATIVE SESSIONS**

**La. C.C. Art. 103 – Immediate Divorce**

(2014) There is no 180 day waiting period for a divorce if the other spouse has physically or sexually abused the spouse seeking divorce or a child of one of the spouses – prosecution is not a factor. Art. 103(4).

(2014) There is no 180 day waiting period for a divorce if a protective order or injunction has been issued after a contradictory hearing to protect the spouse or child of one of the spouses from abuse. Art. 103(5).

(2015) Clarifies that acts of physical or sexual abuse or the issuance of a protective order during the marriage qualifies a spouse for an immediate divorce even if the abuse occurred or the protective order was issued prior to August 1, 2014. This provision has no application to protective orders or injunctions issued pursuant to a consent decree prior to August 1, 2014.

**La. C.C.P. Art. 1702(E) – Confirmation of Immediate Divorce Default Judgment**

(2015) Unless directed by a judge, a plaintiff, seeking an immediate Art. 103(5) divorce due to the issuance of a protective order, shall not be required to have a hearing in open court to obtain a default judgment.

**La. C.C. Art. 113 – 6 Months Interim Spousal Support Mandatory with 103(4)&(5) Divorces**

(2014) If a spouse is seeking final periodic support (formerly “permanent alimony”) pursuant to a divorce under 103(4) or 103(5), Interim spousal support (formerly “temporary alimony”) must be awarded for at least 180 days from the judgment of divorce. Art. 113(C) – maintains standard of living during marriage for as long as possible. The interim spousal award remains in effect for the full 180 days unless the final periodic support award is greater than the interim support.

**La. C.C. Art. 112 – Final Periodic Support Mandatory Upon Finding of Domestic Abuse**

(Pre-2014) Final periodic support (formerly “permanent alimony”) will be awarded only to a spouse who is not at fault prior to filing a petition for divorce. Art. 112(A).

(2014) A court must consider the existence, effect and duration of domestic abuse in determining the amount and duration of final periodic support. Art. 112(C)(9).

(2014) A judge shall consider a domestic abuse conviction and may order an evaluation of the parties to assist the court in determining the existence and nature of the alleged domestic abuse and the appropriate amount and duration of final periodic support. La. R.S. 9:327.

(2014) A faultless victim of domestic abuse committed during a marriage shall be awarded final periodic support. Art. 112(B).

(2014) The support award may exceed an amount in excess of 1/3 of the abuser's net income and may be awarded in a lump sum. Art. 112(B)&(D).

(2014) This is a cause of action separate and distinct from a 103(4) or (5) divorce which is not required to seek final periodic spousal support based on domestic abuse. (La. C.C. art. 118).

**C.C. Art. 2362.1 – Attorney Fees in an Action for Divorce**

(2015) Permits a judge to assess all attorney fees and costs in an action for an immediate divorce and incidental actions thereafter against the perpetrator of abuse as a separate obligation when a La. C.C. art 103(4) or (5) divorce is granted. (Does not include appellate costs.)

**La. CCP Art. 1426.1 – District Attorney Stay of Discovery In All Civil Matters**

(2017) Removed an exemption for divorce & family matters and now allows a DA in a criminal proceeding to request a stay of discovery in a civil action if such discovery will adversely affect the ability of the DA to conduct a related criminal investigation or the prosecution of a felony criminal case.

**La. C.C. Art. 2315.8 - Exemplary Damages**

(2014) Exemplary (“punitive”) damages may be awarded to a family or household member in a tort action upon proof that the serious bodily injury or mental distress suffered were caused by acts of domestic abuse.

(Pre-2014) Spouses must wait until they are divorced before bringing an action in tort against another spouse, but the action can be for any and all acts of domestic abuse which occurred during the marriage. (La. 9:291 – Doctrine of Interspousal Immunity).

(2014) Failure to file for a divorce under Art. 103(4) or 103(5) in no way affects the right to sue a spouse after divorce for domestic abuse. La. C.C. Art. 118.

(2014) 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.

**La. R.S. 46:2131 Domestic Abuse Assistance Act**

(2015) Clarifies that dating partners as defined in La. R.S. 46:2151 are eligible for all civil protections for domestic abuse. [But they are not included in exemplary damages statute – La. C.C. 2315.8.]

**La. R.S. 46:2132(3) – Definition of Domestic Abuse**

(2015) Clarifies that domestic abuse includes physical and non-physical offenses against a person as defined in the Criminal Code of Louisiana. (assault, cyberstalking, video voyeurism, etc.) [Need to remove exemptions for negligent injury and defamation.]

**La. R.S. 46:2133 – Jurisdiction; Venue**

(2016) Allows hearings in any parish of a multi-parish district to expedite hearing or to comply with time delays.

**La. R.S. 46:2132(4) - New Definition of Household Members (Includes Same-Sex Couples)**

(2017) "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.

**La. R.S. 46:2151 – New Definition of Dating Partner**

(2017) "Dating partner" means any person who is involved or has been involved in a sexual or intimate relationship with the offender characterized by the expectation of affectionate involvement independent of financial considerations, regardless of whether the person presently lives or formerly lived in the same residence with the offender. "Dating partner" shall not include a casual relationship or ordinary association between persons in a business or social context.

**La. R.S. 46:2135 – Temporary Restraining Orders**

(2015) Requires that the court consider any and all past history of abuse or threats thereof in determining an immediate and present danger of abuse. There is no requirement that the abuse itself be recent, immediate or present. Immediate and present danger of abuse shall constitute good cause for a TRO. (See Okechukwu – 3<sup>rd</sup> Cir. 2014).

**La. R.S. 46:2136 – Protective Orders**

(2015) Clarifies that a protective order may be granted to bring about a cessation of physical or sexual abuse or any physical or non-physical offense against a person as defined in the Louisiana Criminal Code, or the threat or danger thereof. (This has to be read in *pari materia* with 46:2135).

(2014) All Uniform Abuse Prevention Orders must be sent to the Louisiana Protective Order Registry and to the local chief law enforcement officer by the clerk of the issuing court by fax or direct electronic input expeditiously and no later than the end of the next business day.

(2014) All Uniform Abuse Prevention Orders must be amended to include the firearm possession prohibitions.

(2014) Law enforcement officers shall, at a minimum, issue a summons to a person in violation of a Uniform Abuse Prevention Order. La. R.S. 14:79(E)(1).

(2014) Law enforcement officers shall immediately arrest a person in violation of a Uniform Abuse Prevention Order if the officer has reason to believe the violator has abused a family or household member or a dating partner. La. R.S. 46:2140(A).

(2015) Adds that an officer shall immediately arrest a person in violation of a TRO or protective order issued for stalking or as a condition of bail if the officer believes that abuse has occurred concurrently with the violation. La. R.S. 46:2140(A).

(2014) Law enforcement officers maintain discretion regarding the arrest of an abuser if the abuser is not in violation of a protective order. La. R.S. 46:2140(B).

(2014) When faced with conflicting accounts of domestic abuse or dating violence, law enforcement officers shall presume that the person in violation of a Uniform Abuse Prevention Order is the predominant aggressor and arrest the violator. La. R.S.46:2140(C)(2)(g); La. R.S.46:2140(C)(3)(b).

(2015) Adds that an officer shall assume a person in violation of a TRO or protective order issued for stalking or as a condition of bail is the predominant aggressor. La. R.S. 46:2140(C)(2)(g).

**La. R.S. 46:2136.3 – Firearm Dispossession for Duration of Protective Order**

(2014) Anyone subject to an injunction or protective order (after a show cause hearing) to protect a family or household member may not possess a firearm for the duration of the injunction or protective order if the injunction or protective order includes a finding of a credible threat to the physical safety of the protected person and a statement that possession of a firearm is prohibited pursuant to federal and state laws.

(2017) Applies to Code of Criminal Procedure Articles 30, ~~327.1, 335.1, 335.2~~, 320, or 871.1. [Also needs to apply to La. R.S. 46:1846 if PO is granted pursuant to Victim’s Rights Act.]

**La. R.S. 14:79 Violation of Protective Orders**

~~(2015) A third conviction without a battery or crime of violence is a felony. A second conviction with a battery is a felony.~~

(2016) In violation even if TRO is electronically signed if issues pursuant to DAAA or PDVA.

(2017) A second conviction without a battery or crime of violence is a felony. A first conviction with a battery is a felony.

### **Domestic Abuse Battery**

(2014) Domestic Abuse Aggravated Assault is a crime of violence. La. R.S.14:2(B)(45). This means an offender must serve at least 85% of the sentence imposed.

(2014) A second conviction of Domestic Abuse Battery is a felony. La. R.S. 14:35.3(D).

(2015) Adds family members to the class of protected persons. La. R.S. 14:35.3(5)

(2015) Eliminates the co-habitation requirement within five years of the battery and includes persons formerly living in the same residence. La. R.S. 14:35.3(5)

(2016) Requires completion of (as opposed to enrollment in) DAIP.

(2017) Includes same-sex couples as victims by changing definition of household member. "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~~, and who is involved or has been involved in a sexual or intimate relationship with the offender, 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 lives.

### **La. R.S. 14:37.7 - Domestic Abuse Aggravated Assault**

(2015) Adds family members to class of protected persons and eliminates co-habitation requirement within five years of the assault

(2017) Includes same-sex couples as victims by changing definition of household member. "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~~, and who is involved or has been involved in a sexual or intimate relationship with the offender, 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 lives.

### **La. R.S. 14:34.9 – Battery of a Dating Partner (NEW CRIME in 2017)**

(2017) Includes new definition of "dating partner"

(d) "Dating partner" means any person who is involved or has been involved in a sexual or intimate relationship with the offender characterized by the expectation of affectionate involvement independent of financial considerations, regardless of whether the person presently lives or formerly lived in the same residence with the offender. "Dating partner" shall not include a casual relationship or ordinary association between persons in a business or social context.

(2017) Essentially the same as Domestic Abuse Battery of a Family Member or Household Member, except that a misdemeanor conviction of Battery of a Dating Partner will not trigger the 10 year firearm prohibition, unless the first conviction involves burning and/or strangulation. A misdemeanor conviction will, however, still prohibit firearm prohibition (as in DAB) until completion of sentence.

(2017) Includes completion of DAIP, enhanced penalties for pregnancy, child endangerment, burning and strangulation.

**La. R.S. 14:39.1 – Aggravated Assault Upon a Dating Partner (NEW CRIME in 2017)**

(2017) – Essentially the same as Domestic Abuse Aggravated Assault upon a Family Member or Household Member.

(2017) La. R.S. 14:2(B)(47) – Aggravated Assault Upon a Dating Partner is a crime of violence.

**C.Cr.P. 321 – Bail Restrictions (2014 Legislation Re-Numbered in 2016)**

C. Any defendant who has been arrested for any of the following offenses shall not be released on his personal undertaking or with an unsecured personal surety:

- (1) A crime of violence as defined by R.S. 14:2(B).
- (2) A felony offense, an element of which is the discharge, use, or possession of a firearm.
- (3) A sex offense as defined by R.S. 15:541 when the victim is under the age of thirteen at the time of commission of the offense and less than ten years have elapsed between the date of the commission of the current offense and the expiration of the maximum sentence of the previous conviction.
- (4) R.S. 14:32.1 (vehicular homicide).
- (5) R.S. 14:35.3 (domestic abuse battery)
- (6) R.S. 14:37.7 (domestic abuse aggravated assault).

**La. R.S. 15:590 – Fingerprint and Identification Data**

(2014) Requires fingerprints, photos and other identifying data of a person arrested for Domestic Abuse Battery

(2017) Adds Battery of Dating Partner

**C.Cr.P. Art. 313 - Setting Bail for Felony Offenses Against a Family or Household Member or Dating Partners (Gwen’s Law)** (formerly art. 330.3)

(2014) Contradictory bail hearing was mandatory – not anymore.

(2015) 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.

The judge or magistrate shall consider the he criminal history of the defendant, 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; 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.

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.

**CCrP Art. 320 - Conditions of Bail Undertaking - Offenses against a family or household member or dating partner; victims of sexual assault; provisions for forfeiture, arrest, modification** (Formerly art. 335.1)

G. Domestic offenses, stalking, and sex offenses. (1) 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, 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, or who is alleged to have committed the offense of first degree rape under the provisions of R.S. 14:42, the court shall consider the previous criminal history of the defendant and 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. The court shall also consider any statistical evidence prepared by the United States Department of Justice relative to the likelihood of such defendant or any person in general who has raped or molested victims under the age of thirteen years to commit sexual offenses against a victim under the age of thirteen in the future.

**(2017)**(2) If the defendant is alleged to have committed any of the offenses included in Paragraph (1) of this Subsection, the court may require as a condition of bail that the defendant be prohibited from communicating, by electronic communication, in writing, or orally, with a victim of the offense, or with any of the victim's immediate family members, while the case is pending. This condition does not apply if the victim consents in person or through a communication through the local prosecuting agency.

H. Uniform Abuse Prevention Order. (1) If, as part of a bail restriction, an order is issued for purposes 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 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.

(2016)(2) 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. [Effective, Jan. 1, 2017, sexual assault offenders are treated the same as stalkers and other domestic abusers – firearm prohibition is mandatory if PO is issued.]

#### **CCrP Art. 387 – Additional Identification Required for Prosecution**

(2015) An indictment, information, or affidavit shall include date of arrest, relationship to victim, and state ID, if any, when instituting prosecution of a domestic abuse battery offense.

#### **La. R.S. 14:95.10 - Firearm Dispossession Following Misdemeanor Conviction of Domestic Abuse Battery**

(2014) Persons convicted of domestic abuse battery cannot possess a firearm until 10 years after completion of their sentence, probation, parole or suspension of sentence, even if the conviction was for a misdemeanor under La. R.S. 14:35.3. La. R.S. 14:95.10.

(2017) Expand 10 year firearm prohibition to:

A second or subsequent offense of battery of a dating partner (R.S. 14:34.9).

Battery of a dating partner when the offense involves strangulation (R.S. 14:34.9(K)).

Battery of a dating partner when the offense involves burning (R.S. 14:34.9(L)).

#### **C.Cr.P. 890.1 - No Waiver of Mandatory Minimum Sentences**

(2014) Excludes domestic abuse battery, rape, stalking, human trafficking, and other violent offenses from the list of crimes for which a minimum sentence can be waived.

#### **CCrP Art. 977(C)(2); CCrP 987 - Expungement**

(2015) A misdemeanor conviction of misdemeanor or felony domestic abuse battery cannot be expunged.

### **Domestic Abuse Intervention Program - New Definition**

(2014) If a person is ordered to complete a treatment program pursuant to the Post Separation Family Violence Relief Act or the Domestic Abuse Battery statute, the program must be court-monitored and consist of a minimum of 26 in-person sessions. La. R.S. 14:35.3(B); La. R.S.9:362(7).

(2015) DAIP programs cannot be accelerated and must occur over a minimum of 26 weeks.

### **La. R.S. 14:40.2 – Stalking**

(2015) Adds written threats to the list of acts which may cause a person to suffer emotional distress

(2017) Requires issuance of a protective order during probation period

(2017) Removes exemption for any private investigator hired by offender to harass the victim

### **La. R.S. 46:1860 - Family Justice Centers**

(2015) Creates criteria for Family Justice Centers in Louisiana to provide multiagency and multidisciplinary support and services to victims of abuse, sexual assault, stalking, cyberbullying and human trafficking without compromising the confidentiality of victim information and services.

### **La. R.S. 9:3262 – Lease Agreements – Domestic Abuse Victims**

(2015) A lease agreement cannot contain provisions which prohibit or penalize a person who summons emergency assistance. A landlord cannot refuse to lease or renew a lease simply because the tenant is a victim of domestic abuse. A landlord cannot issue a notice to vacate or to terminate a lease and must provide early termination of a lease, if requested, without forfeiture of a security deposit to a tenant who timely provides documentation of being a victim of domestic abuse upon the leased property. A victim who seeks early termination or who wishes to enter a new lease must agree that the perpetrator of abuse cannot enter the leased premises. If a victim's offender continues cause disturbances on the leased premises, the landlord can terminate the victim's lease. In such cases, the landlord may provide another leased dwelling if available. A landlord can always immediately evict the perpetrator of domestic abuse. A victim wrongfully evicted or denied early termination can seek injunctive relief within one year of the act.

### **La. R.S. 46:1844 – Basic Rights for Victims & Witnesses**

(2016) Designated seating for victims and witnesses separate from Defendant and family in courtroom.

**C.E. 412.4 – Evidence of Similar Crimes, Wrongs or Acts**

(2016) Admissible in criminal prosecutions for domestic abuse and cruelty to juvenile cases.

(2017) Admissible in battery of dating partner and aggravated assault upon a dating partner prosecutions

**La. R.S. 13:753 – Reporting to Louisiana Supreme Court for NICS Database; Firearms**

(2016) Requires reporting from city and parish court clerks to LASC to National Instant Background Check System Database of persons prohibited from possessing firearm for DAB conviction, acquittal by reason of insanity; determination of lack of mental capacity or any court order of prohibition.

**La. R.S. 40:1379.3.2 – Temporary Concealed Gun Permit; Protective Orders**

(2016) A person (HM, FM, DP) protected by permanent injunction or protective order to cease abuse which prohibits the offender from possessing a firearm may apply for a temporary (45 day) concealed handgun permit. Background check required.