

Regular Session, 2014

HOUSE BILL NO. 747

BY REPRESENTATIVES MORENO AND BROSSETT

CRIME/BATTERY: Provides relative to domestic abuse battery and other offenses involving domestic abuse

1 AN ACT

2 To amend and reenact R.S. 14:35.3(B)(3), (4), and (5), (C), (D), (H), and (J) and Code of
3 Criminal Procedure Article 334.2, to enact R.S. 14:2(B)(45) and 35.3(B)(6), and to
4 repeal Code of Criminal Procedure Article 334.4(A)(4), relative to acts of domestic
5 abuse; to designate domestic abuse aggravated assault as a crime of violence; to
6 provide relative to the crime of domestic abuse battery; to amend penalty provisions
7 of domestic abuse battery for purposes of persons placed on probation; to provide for
8 a definition of "court-monitored domestic abuse intervention programs" for purposes
9 of persons on probation for domestic abuse battery; to amend penalties for a second
10 conviction of domestic abuse battery; to provide relative to the designation of an act
11 of violence against a family member as "domestic abuse"; to prohibit release on a
12 person's own recognizance after an arrest for certain offenses related to domestic
13 violence; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. R.S. 14:35.3(B)(3), (4), and (5), (C), (D), (H), and (J) are hereby amended
16 and reenacted and R.S. 14:2(B)(45) and 35.3(B)(6) are hereby enacted to read as follows:

17 §2. Definitions

18 * * *

19 B. In this Code, "crime of violence" means an offense that has, as an
20 element, the use, attempted use, or threatened use of physical force against the

1 person or property of another, and that, by its very nature, involves a substantial risk
2 that physical force against the person or property of another may be used in the
3 course of committing the offense or an offense that involves the possession or use
4 of a dangerous weapon. The following enumerated offenses and attempts to commit
5 any of them are included as "crimes of violence":

6 * * *

7 (45) Domestic abuse aggravated assault.

8 * * *

9 §35.3. Domestic abuse battery

10 * * *

11 B. For purposes of this Section:

12 * * *

13 (3) "Court-monitored domestic abuse intervention program" means a twenty-
14 six week course provided by the Department of Children and Family Services or
15 other provider which follows a national model and is designed specifically for
16 perpetrators of domestic abuse and conducted by a person with all of the following:

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

19 (b) Experience in facilitating batterer intervention groups.

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

22 ~~(3)~~(4) "Household member" means any person of the opposite sex presently
23 living in the same residence or living in the same residence within five years of the
24 occurrence of the domestic abuse battery with the defendant as a spouse, whether
25 married or not, or any child presently living in the same residence or living in the
26 same residence within five years immediately prior to the occurrence of domestic
27 abuse battery, or any child of the offender regardless of where the child resides.

28 ~~(4)~~(5) "Serious bodily injury" means bodily injury that involves
29 unconsciousness, extreme physical pain, or protracted and obvious disfigurement,

1 or protracted loss or impairment of the function of a bodily member, organ, or
2 mental faculty, or a substantial risk of death.

3 ~~(5)~~(6) "Strangulation" means intentionally impeding the normal breathing
4 or circulation of the blood by applying pressure on the throat or neck or by blocking
5 the nose or mouth of the victim.

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

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

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

22 D. On a conviction of a second offense, notwithstanding any other provision
23 of law to the contrary, regardless of whether the second offense occurred before or
24 after the first conviction, the offender shall be fined not less than seven hundred fifty
25 dollars nor more than one thousand dollars and shall be imprisoned with or without
26 hard labor for not less than sixty days nor more than ~~six months~~ one year. At least
27 fourteen days of the sentence imposed shall be served without benefit of parole,
28 probation, or suspension of sentence, and the offender shall be required to participate
29 in a ~~court-approved~~ court-monitored domestic abuse ~~prevention~~ intervention

1 program. Imposition or execution of the remainder of the sentence shall not be
2 suspended unless either of the following occur:

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

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

12 * * *

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

18 * * *

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

23 * * *

24 Section 2. Code of Criminal Procedure Article 334.2 is hereby amended and
25 reenacted to read as follows:

26 Art. 334.2. Arrest for a crime of violence ~~or~~ and other offenses related to domestic
27 abuse ~~battery~~; release on own recognizance prohibited

28 Notwithstanding any other provision of law to the contrary, any defendant
29 who has been arrested for ~~domestic abuse battery or for a crime of violence as~~

1 ~~defined in R.S. 14:2(B)~~ any of the following offenses shall not be released by the
2 court on his own recognizance or on the signature of any other ~~person~~: person:

3 (1) Domestic abuse battery.

4 (2) Domestic abuse aggravated assault.

5 (3) False imprisonment.

6 (4) False imprisonment while the offender is armed with a dangerous
7 weapon.

8 (5) A crime of violence as defined by R.S. 14:2(B).

9 (6) Violation of an order issued pursuant to R.S. 9:361 et seq., R.S. 9:372,
10 R.S. 46:2131 et seq., R.S. 46:2151, Children's Code Article 1564 et seq., Code of
11 Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles
12 30, 327.1, 335.2, and 871.1.

13 Section 3. Code of Criminal Procedure Article 334.4(A)(4) is hereby repealed in its
14 entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Moreno

HB No. 747

Abstract: Provides relative to domestic abuse battery and other offenses involving domestic abuse.

Present law designates certain crimes as "crimes of violence".

Proposed law adds domestic abuse aggravated assault to the list of crimes of violence.

Present law defines the crime of "domestic abuse battery" as the intentional use of force or violence committed by one household member upon the person of another household member.

Present law provides that an offender may only be placed on probation for a commission of domestic abuse battery if he is required to participate in a "court-approved" domestic abuse "prevention" program.

Proposed law amends present law to provide that the offender shall be required to participate in a "court-monitored domestic abuse intervention program" and provides that such program shall mean a 26-week course provided by the Dept. of Children and Family Services or other provider which follows a national model and is designed specifically for perpetrators of domestic abuse and conducted by a person with all of the following:

- (1) Experience in working directly with perpetrators and victims of domestic abuse.
- (2) Experience in facilitating batterer intervention groups.
- (3) Training in the causes and dynamics of domestic violence, characteristics of batterers, victim safety, and sensitivity to victims.

Present law provides that a person convicted of a second offense domestic abuse battery shall be imprisoned for not less than 60 days nor more than six months.

Proposed law increases this term of imprisonment to not less than 60 days nor more than one year and provides that it shall be served with or without hard labor.

Present law provides that 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 violence.

Proposed law retains present law, and clarifies that this designation as domestic violence is for purposes of any civil or criminal proceeding authorized by law.

Present law provides that any defendant who has been arrested for domestic abuse battery or for a crime of violence shall not be released on his own recognizance or on the signature of any other person.

Present law provides that any defendant who has been arrested for violation of a protective order shall not be released on his own recognizance or on the signature of any other person if the person has a prior conviction for the same offense.

Proposed law adds domestic abuse aggravated assault, false imprisonment, and false imprisonment while the offender is armed with a dangerous weapon to the list of offenses for which a defendant may not be released on their own recognizance or on the signature of any other person.

Proposed law amends present law to provide that a person shall not be released on his own recognizance or on the signature of any other person for a violation of a protective order issued pursuant to present law regardless of whether the person has a prior conviction for the same offense.

(Amends R.S. 14:35.3(B)(3), (4), and (5), (C), (D), (H), and (J) and C.Cr.P. Art. 334.2; Adds R.S. 14:2(B)(45) and 35.3(B)(6); Repeals C.Cr.P. Art. 334.4(A)(4))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill.

1. Removed domestic abuse battery from the list of enumerated crimes of violence.
2. With regard to the program that an offender is required to participate in if placed on probation for a conviction of domestic abuse battery, changed the name to "court-monitored domestic abuse intervention program" and defined it to include a 26-week course provided by DCFS or other provider which follows a national model.
3. With regard to the court-monitored domestic abuse intervention programs, provided that persons conducting the program shall have experience in working directly with perpetrators and victims of domestic abuse.

4. Amended the change to the penalty provisions for a second conviction of domestic abuse battery to provide that the sentence shall be served "with or without hard labor" instead of "at hard labor".
5. Made technical amendments to reflect these changes.