

**UNITED AGAINST DOMESTIC VIOLENCE
NEW DOMESTIC VIOLENCE LAWS
2014, 2015, 2016, 2017 & 2018 LEGISLATIVE SESSIONS
(PREPARED/AMENDED JUNE 15, 2019 BY KIM SPORT)**

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.

(2018) Revision Comment by LSLI – Protective orders qualifying for a 103(5) divorce may be civil or criminal. (Ex. Stalking PO pursuant to La. R.S. 14:40.2). NO CHANGE IN LAW.

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 – Interim Spousal Support

(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.

(2018) All awards of interim spousal support shall terminate 180 days from a divorce judgment, and can be extended for good cause shown. Final periodic spousal support does not begin until termination of interim spousal support. (Upon the recommendation of LSLI) (HB 100). EFFECTIVE 8/1/18.

La. C.C. Art. 112 – Final Periodic Support

(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. (in other words, a court must consider “prior acts”.) 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).

(2018) Upon recommendation of the LSLI, mandatory support for spouses who prove they were victims of domestic abuse during the marriage has been replaced with a presumption of entitlement to final periodic spousal support when a spouse is granted a divorce pursuant to Art. 103(2) adultery, (3) felony imprisonment, (4) physical/sexual abuse or (5) PO issued, or when the court determines that a party or a child of one of the spouses was the victim of domestic abuse. This presumption may be overcome by evidence of need, ability to pay, or pre-filing fault. EFFECTIVE 8/1/18.

(2018) Part “D” clarifies existing language and further states that, when a court grants a 103(4) or (5) divorce or determines that a party or a child of one of the spouses was a victim of domestic abuse committed during the marriage, spousal support may exceed 1/3 of the abuser’s net income and may be awarded in a lump sum.

(2018) LSLI Revision Comments cite La. R.S. 9:327 for its use in determining domestic abuse during the marriage and discuss that, particularly in domestic abuse situations, fault may be a justifiable response to domestic abuse. NO CHANGE IN LAW

C.C. Art. 2362.1 – Obligation Incurred 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, but see La. R.S. 9:314 below.)

(2018) LSLI Revision – Part “B”: The obligation for attorney fees and costs incurred by the perpetrator of abuse or awarded against him in an action for divorce pursuant to Art. 103(4) or (5) or in an action in which the court determines that a spouse or a child of one of the spouses was the victim of domestic abuse committed during the marriage, and in incidental actions, shall be a separate obligation of the perpetrator. Art. 2362.1(B).

{2018} La. R.S. 9:314 – Attorney Fees & Costs in Domestic Abuse Cases (NEW)

The court may assess against the perpetrator of domestic abuse all court costs, attorney fees, costs of enforcement and modification proceedings, costs of appeal, evaluation fees, and expert witness fees in an action for divorce granted pursuant to Art. 103(4) or (5), or in an action in which the court determines that a party to a divorce or a child of the spouses was the victim of domestic abuse committed by the perpetrator during the marriage, and in incidental actions. (Includes appeals, but the assessment is discretionary.)

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

(2017) Removes 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.

(2018) LSLI revised 2315.8 to clarify that the sanctions in part “B” apply only to actions seeking exemplary damages for abuse – not to “any action alleging domestic abuse.”

La. R.S. 46:2131 Domestic Abuse Assistance Act (DAAA)

(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) – DAAA - 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.) [Future Goal – Should remove exemptions for negligent injury and defamation.]

La. R.S. 46:2133 – DAAA - 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) - DAAA - 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 formerly living in the same residence with the defendant as a spouse, 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 – DAAA - 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 – DAAA - 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 – 3rd Cir. 2014.) (See also new C.E. Art. 412.5, effective 5/15/18.)

La. R.S. 46:2136 – DAAA - Protective Orders

(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).

(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).

(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).

(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).

(2018) A court may order a medical or mental health examination of the perpetrator of abuse. The mental health examination must be conducted by an expert in the field of domestic abuse. The court may order treatment or counseling for the abuser based on the report. La. R.S. 46:2136(4)(a).

La. R.S. 46:2136.1 – Costs Paid By Abuser Under DAAA

(2018) LSLI Technical Amendment:

A. All court costs, attorney fees, costs of enforcement and modification proceedings, costs of appeal, 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.

Children’s Code Art. 1570.1 – DAAA - Costs Paid by Abuser

(2018) LSLI Technical Amendment:

A. All court costs, attorney fees, costs of enforcement and modification proceedings, costs of appeal, 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.

La. R.S. 46:2136.2 – DAAA - Louisiana Protective Order Registry

(2018) Adds stalking protective orders. Requires LPOR to collect data transmitted to it from law enforcement and private process servers.

La. R.S. 46:2136.3 – DAAA - Prohibition on Possession of Firearm & Carrying a Concealed Weapon By a Person Against Whom A Protective Order is Issued

(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.]

(2018) A violation of 46:2136.3 shall be criminally prosecuted under 14:79 (VPO). (La. R.S. 46:2136.3(C)). (Before this, 46:2137 was the only penalty provision In the DAAA and made punishment by contempt of court or under criminal laws discretionary.) **46:2137 is repealed.** EFFECTIVE 10/1/18.

(2018) Adds prohibition on carrying a concealed weapon for duration of the PO. (La. R.S. 2136.3(A)). EFFECTIVE 10/1/18.

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.

(2018) A party is properly served if tendered a copy of a TRO or ex parte TRO by law enforcement who must include notice of service in a police report. Adds additional requirement of proof of service via transmission to the Judicial Administrator’s Office for entry into the Louisiana Protective Order Registry.

(2018) VPO includes a violation of La. R.S. 46:1846 (Communication Between Offender & Victim Prohibited); 46:2136.3 (Firearm Dispossession for Duration of Protective Order); 14:95.1 (Firearm Prohibition – Felony), 14:95.1.3 (Unlawful Attempt to Purchase); and 14:95.10 (DAB, BDP). EFFECTIVE 8/1/18.

(2018) VPO with a concurrent battery is an enumerated crime of violence. La. R.S. 14:2(B)(50). EFFECTIVE 8/1/18.

La. R.S. 14:35.3 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.

(2018) Domestic Abuse Battery with burning which causes severe bodily injury ((14:35.3(M)(2)) and any act of DAB which causes severe bodily injury ((14:35.3(N)) are enumerated crimes of violence. La. R.S. 14:2(B)(48). EFFECTIVE 8/1/18.

(2018) A judge may impose an "add-on" penalty of up to 8 years imprisonment to any act of Domestic Abuse Battery which causes severe bodily injury. EFFECTIVE 8/1/18.

(2018) A judge may impose an "add-on" penalty of up to 3 years imprisonment to any act of Domestic Abuse Battery which involves child endangerment, a known pregnancy, burning (without SBI), or strangulation. (La. 14:35.3 (I), (J), (K) & (L). EFFECTIVE 8/1/18.

(2018) A prior conviction of Battery of a Dating Partner qualifies as a prior conviction of DAB. (La R.S. 14:35.3(G)(1)). EFFECTIVE 8/1/18.

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

(2015) Adds family members to the 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. (See also: La. R.S. 46:2151).

(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.

(2017) A prior conviction of Battery of a Dating Partner qualifies as a prior conviction of DAB. (La R.S. 14:34.9(G)(1))

(2018) Battery of a Dating Partner with burning which causes severe bodily injury ((14:34.9(L)(2)) and any act of BDP which causes severe bodily injury ((14:34.9(M)) are enumerated crimes of violence. La. R.S. 14:2(B)(49). EFFECTIVE 8/1/18.

(2018) A judge may impose an “add-on” penalty of up to 8 years imprisonment to any act of Battery of a Dating Partner which causes severe bodily injury. EFFECTIVE 8/1/18.

(2018) A judge may impose an “add-on” penalty of up to 3 years imprisonment to any act of Battery of a Dating Partner which involves child endangerment, a known pregnancy, burning (without SBI), or strangulation. (La. R.S. 35.3 (I),(J),(K) &(L)). EFFECTIVE 8/1/18.

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.

(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.]

(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. (BUT SEE 46:1846's 2018 REVISION)

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.

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. 14:95.1.3 – Fraudulent Firearm and Ammunition Purchase; Mandatory Reporting

(2012) A. It is unlawful for any person: (1) To knowingly solicit, persuade, encourage, or entice a licensed dealer or private seller of firearms or ammunition to sell a firearm or ammunition under circumstances which the person knows would violate the laws of this state or of the United States; (2) To provide to a licensed dealer or private seller of firearms or ammunition what the person knows to be materially false information with intent to deceive the dealer or seller about the legality of a sale of a firearm or ammunition; (3) To willfully procure another person to engage in conduct prohibited by this Section. ... D. Whoever violates the provisions of this Section shall be fined not less than one thousand dollars or more than five thousand dollars, or imprisoned, with or without hard labor, for not less than one year or more than five years, or both. At least one year of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

(2018) Whoever violates part A shall be fined (\$1000 to \$5000) or imprisoned with or without hard labor for not less than 20 years. The sentence shall be served without benefit of parole, probation or suspension of sentence.

(2018) A NICS background check denial shall be reported by a licensed firearm dealer to the parish in which the attempted purchase occurred and the LAVNS (for victim notification). If a firearm dealer fails to report that a purchaser or attempted purchaser was prohibited from possessing a firearm to the local sheriff, local law enforcement shall notify all state and federal licensing agencies.

La. R.S. 14:95.1.4 – Illegal Transfer of a Firearm to a Prohibited Purchaser (NEW LAW)

(2018) Whoever intentionally gives, sells, donates, lends, delivers or otherwise transfers a firearm to a person prohibited from possession under state or federal law may be imprisoned for not more than one year.

La. R.S. 14:95.10 - Possession of a Firearm or Carrying of a Concealed Weapon by a Person Convicted of Domestic Abuse Battery and Certain Offenses of Battery of a Dating Partner

(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) Expands 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)).

(2018) VPO under 14:79 includes possession of a firearm or carrying a concealed weapon in violation of La. R.S. 14:95.10.

(2018) Increases the penalty for violation of 14:95.10 from imprisonment with or without hard labor for not less than one year nor more than five years to not more than 20 years without the benefit of probation, parole, or suspension of sentence.

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 Art. 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

(2018) Requires that any protective order issued following a stalking conviction, which is mandatory during probation and discretionary upon motion of the court or the DA to protect the victim, include a firearm prohibition. Note that if a PO is issued at upon motion of the court or DA, it can be for an indefinite period. La. R.S. 40.2(F)(5). Firearm prohibition was already mandatory under 46:2136.3 for civil stalking POs.

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.

La. R.S. 46:1846 – Communication Between Offender & Victim Prohibited

(2018) This prohibition on communication in the Victims' Rights Act only applied where an offender was charged with a "crime of violence" during disposition of the criminal case and following conviction. The prohibition on communication extended to the offender and the offender's immediate family members and the victim and the victims' immediate family members. This revision extends this statutory prohibition on communication to any felony offense committed upon a family member, household member or dating partner even if it is not a crime of violence. A new provision (La. R.S. 46:1846(E)) requires a court to issue a PO, at a minimum, to the victim and the victim's children which must be entered into LPOR, creates a presumption that the offender poses a threat of danger to the victim, and prohibits firearm possession for the duration for the PO. An additional new provision (La. R.S. 46:1946(F)) allows any violation to be prosecuted pursuant to La. R.S. 14:79 (VPO).

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 criminal prosecutions

C.E. 412.5 – Evidence of Similar Crimes, Wrongs or Acts in Certain Civil Cases

(2018)

A. In any civil action alleging acts of domestic abuse as defined in R.S. 46:2132(3), family violence as defined in R.S. 9:362(4), or sexual abuse as defined in R.S. 9:362(6), evidence of the defendant's commission of a crime, wrong, or act involving acts of domestic abuse, family violence, or sexual abuse may be admissible and may be considered for its bearing on any matter to which it is relevant subject to the balancing test provided in Article 403.
B. A plaintiff in a tort action intending to offer evidence under the provisions of this Article shall provide reasonable notice in advance of trial of the nature of such evidence.

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.

Child Custody – Art. 132 – Award of Custody to Parents

(2018) A court shall award custody in accordance with an agreement of the parents unless the provisions of La. R.S. 9:364 apply (presumption of no unsupervised visitation with a child/stepchild by a parent who has a history of domestic abuse, family violence, or sexual abuse **OR** who has permitted another to abuse any child or step child despite having an ability to prevent the abuse **AND** presumption of no visitation or contact by a parent with a child who has been sexually abused by that parent.)

Child Custody – Art. 134 – Factors in Determining Child's Best Interest

(2018) The potential for a child to be abused, as defined in Children's Code art. 603(2), shall be the primary consideration in determining the best interest of a child. The court shall consider the history of substance abuse, violence or criminal activity of any party. The court shall consider the mental and physical health of each party; however, evidence that an abused parent

suffers from the effects of abuse by other parent shall not be grounds for denying the abused parent custody. An unwillingness by one party to facilitate and encourage a close and continuing relationship between a child and the other party shall not be factored against a parent when objectively substantial evidence of specific abuse, reckless, or illegal conduct has caused one party to have reasonable concerns for the child's safety or well-being while in the care of the other party.

(2018) A new Part "B" in art. 134 orders the court to determine custody and visitation awards in accordance with La. R.S. 9:341 (Restriction on Visitation) and La. R.S. 9:364 (PSFVRA) when there is a history of family violence, domestic abuse or sexual assault.

Child Custody – Art. 136 – Award of Visitation Rights

(2018) Subject to 9:341 and 9:364 a noncustodial parent is entitled to reasonable visitation unless visitation would not be in the best interest of a child.

Child Custody – Art. 9:341 – Restriction on Visitation

(Prior Law) A. Whenever the court finds by a preponderance of the evidence that a parent has subjected his or her child to physical abuse, or sexual abuse or exploitation, or has permitted such abuse or exploitation of the child, the court shall prohibit visitation between the abusive parent and the abused child until such parent proves that visitation would not cause physical, emotional, or psychological damage to the child. Should visitation be allowed, the court shall order such restrictions, conditions, and safeguards necessary to minimize any risk of harm to the child. All costs incurred in compliance with the provisions of this Section shall be borne by the abusive parent.

B. When visitation has been prohibited by the court pursuant to Subsection A, and the court subsequently authorizes restricted visitation, the parent whose visitation has been restricted shall not remove the child from the jurisdiction of the court except for good cause shown and with the prior approval of the court.

(2018) Adds stepchildren as victims of abuse and allows only supervised visitation by an abusive parent when it is proved by a POTE that the parent subjected a child to family violence (PSVRA 9:362), domestic abuse (DAAA 46:2132), permitted another to abuse a child despite an ability to prevent it, or subjected any other household member to a history of family violence (PSVRA 9:364(A)). Visitation shall be awarded following a contradictory hearing, only after the abuser completes a DAIP. At this hearing, the court shall consider the abuser's mental health, the possibility the abuser will again abuse the child or household member or permit abuse by another, whether visitation is in the best interest of the child using the Art. 134 factors, and whether visitation would not cause physical, emotional or psychological damage to the child. If visitation is allowed, the court shall minimize risks of harm to the child which many include continued supervision. All costs shall be borne by the abusive parent.

(2018) If a court finds by C&CE that a parent has subjected any child/stepchild or household member to sexual abuse (14:403(A)(4)(b)) or has permitted such abuse, the court shall prohibit all contact and communication between the abusive parent and the child. Visitation shall be awarded following a contradictory hearing, only after the abuser completes a sexual abuse treatment program. At this hearing, the court shall consider the abuser's mental health, the possibility the abuser will again abuse the child or household member or permit abuse by another, whether visitation is in the best interest of the child, and whether visitation would not cause physical, emotional or psychological damage to the child. If visitation is allowed, the court shall minimize risks of harm to the child which many include continued supervision. All costs shall be borne by the abusive parent.

(2018) Whenever the court authorizes further restricted visitation, that parent shall not remove the child from the jurisdiction of the court except for good cause shown and with court approval.

La. R.S. 9:364 – Child Custody, Visitation – PSFVRA

(2018) Expands PSFVRA’s presumption prohibiting sole or joint custody beyond a history of perpetuating family violence to domestic abuse (DAAA 46:2132), sexual abuse (14:403(A)(4)(b)) and permitting another to abuse a child despite an ability to prevent it.

(2018) The presumption shall be overcome if the court finds all of the following by a POTE: (1) completion of a DAIP or sexual abuse program; (2) no drug or alcohol abuse; (3) best interest of the child considering the Art. 134 factors because the other parent’s behaviors are negatively affecting the children (unless the other parent is suffering the effects of abuse).

(2018) If necessary to protect the welfare of a child when both parents have a history of family violence, the court may award sole custody to a parent least likely to continue the perpetration of family violence after completion of a DAIP or may award custody to a non-parent pursuant to Art. 133 (a person with whom the child has been living or who can provide a wholesome and stable environment).

(2018) In all cases of family violence, the court shall allow supervised visitation with a child pursuant to La. R.S. 9:341. In all cases of sexual abuse, the court shall prohibit all contact and communication with a child pursuant to La. R.S. 9:341.

La. R.S. 9:367 PSFVRA Costs

(2018) Adds costs of enforcement & modification proceedings and costs of appeal to PSFVRA which **shall** be assessed against the perpetrator of abuse.

La. R.S. 14:283 - Video Voyeurism – Lewd & Lascivious Intent Not Necessary in Certain Cases

(2018) A person can be convicted of video voyeurism without proving lewd or lascivious intent if images are of sexual acts or nudity involving genitalia or breasts of an identifiable person in a place where there is an expectation of privacy.

CODE OF CRIMINAL PROCEDURE – TITLE XXXV – DOMESTIC VIOLENCE FIREARM TRANSFER – NEW LAW – EFFECTIVE OCTOBER 1, 2018 (SEE 2019 AMENDMENTS)

Article 1001:

A judge shall order the transfer of all firearms and the suspension of a concealed handgun permit of a person convicted of DAB and certain convictions of BDP and of a person subject to an injunction or protective order which prohibits a person from possessing a firearm or carrying a concealed weapon. A judge shall order the transfer and suspension at the time of the issuance of the Injunction/PO or at the time of conviction. The order shall inform the person of the prohibition on possession and concealed carry.

The person shall state in open court or in an affidavit the number and location of all firearms in his possession and shall further complete a firearm information form which states the number of firearms in possession and the serial number and location of each. The court shall transfer a copy of its order to transfer and the person’s firearm information form to the local sheriff or the sheriff of the parish of the person’s residence.

In open court and on the record, the judge shall order the transfer to the sheriff no later than 48 hours, exclusive of holidays, after the court has transferred its order and the person’s firearm information form to the sheriff. (If the person is incarcerated, the transfer shall occur within 48 hours of his release.)

At the time of transfer to the sheriff, the sheriff shall cause to have prepared a “proof of transfer” form. This form cannot contain the quantify of any identifying information about any transferred firearm. The sheriff shall retain a copy and provide the person with a copy, which the person shall file with the clerk of the court issuing the order within five days, exclusive of holidays. If a person does not have any firearms or a concealed carry permit, he shall complete a “declaration of non-possession” which shall be copied to the sheriff and filed with the clerk of court within five days, exclusive of holidays.

Failure to provide the information is punishable by contempt of court. Information provided cannot be used against the person except as provided by the laws in perjury or false swearing.

Art. 1002:

The sheriff of each parish is responsible for oversight of all firearm transfers, and can offer the following options to the transferor: Allow a third party who does not reside with the transferor to hold the transferred firearms. The third party must be able to lawfully possess a firearm and shall be informed of all relevant state and federal laws, including being charged with a crime if he returns the firearm to the person dispossessed. The sheriff may contract with a storage facility or accept and store the firearms and charge the transferor a reasonable fee. The sheriff may also oversee the legal sale of the firearms to a third party via a contract with a licensed firearm dealer.

The sheriff shall provide a receipt for each transferred firearm, including the date, the manufacturer and serial number of each firearm. Both the officer accepting the firearm and the person transferring the firearm shall sign the receipt which may be required before any firearm is returned. The sheriff shall keep a record of all transferred firearms including the manner in which the firearm is stored.

When the person is no longer prohibited from possession (under state or federal law), he may file a motion with the court requesting return of the firearms. Once the court determines the person is not prohibited from possession under state or federal law, the court can issue an order of return, which shall include the date of the lifting of the prohibition on possession, and send a copy to the sheriff. After a firearm is returned, the sheriff shall destroy any records pertaining to the returned firearm and instruct the clerk of court to destroy any pertinent records.