

Regular Session, 2012

HOUSE BILL NO. 338

BY REPRESENTATIVE JOHNSON

SEX OFFENSE/REGISTRY: Authorizes the use of truth verification examinations for certain sex offenders

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 895(I), (J), (K), (L), and (M) and
3 to enact R.S. 15:538(E) and 574.4.3(F) and Code of Criminal Procedure Article
4 895(N), relative to sex offenders; to provide relative to conditions of probation and
5 parole for certain sex offenders; to authorize the use of truth verification
6 examinations; to provide relative to the administration of truth verification
7 examinations; to prohibit the use of test results for certain purposes; to provide for
8 definitions; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 15:538(E) and 574.4.3(F) are hereby enacted to read as follows:

11 §538. Conditions of probation, parole, and suspension or diminution of sentence

12 * * *

13 E.(1) In cases where the sexual offender has been convicted of or where
14 adjudication has been deferred or withheld for the perpetration or attempted
15 perpetration of a sex offense as defined in R.S. 15:541 and the victim of that offense
16 is a minor, the court or the Board of Parole may, as an additional condition of
17 probation or parole, authorize the use of truth verification examinations to determine
18 if the sexual offender has violated a condition of probation or parole. If ordered by
19 the court or the Board of Parole as a condition of probation or parole, the Department
20 of Public Safety and Corrections, division of probation and parole, is hereby

1 authorized to administer a truth verification examination pursuant to the order of the
2 court or the Board of Parole and the provisions of this Subsection.

3 (2) Any examination conducted pursuant to the provisions of this Subsection
4 shall be subsequent to an allegation that the sexual offender has violated a condition
5 of probation or parole or at the discretion of the probation or parole officer who has
6 reason to believe that the sexual offender has violated a condition of probation or
7 parole.

8 (3) The truth verification examination shall be conducted by a trained and
9 certified polygraphist or voice stress examiner.

10 (4) The results of the truth verification examination may be considered in
11 determining the level of supervision and treatment needed by the sexual offender and
12 in the determination of the probation or parole officer as to whether the sexual
13 offender has violated a condition of probation or parole; however, such results shall
14 not be used as evidence in court or by the Board of Parole to prove that a violation
15 of a condition or probation or parole has occurred.

16 (5) The sexual offender may request a second truth verification examination
17 to be conducted by a trained and certified polygraphist or voice stress examiner of
18 his choice. The cost of the second examination shall be borne by the offender.

19 (6) For purposes of this Subsection:

20 (a) "Polygraph examination" shall mean an examination conducted with the
21 use of an instrument or apparatus for simultaneously recording cardiovascular
22 pressure, pulse and respiration, and variations in electrical resistance of the skin.

23 (b) "Truth verification examination" shall include a polygraph examination
24 or a voice stress analysis.

25 (c) "Voice stress analysis" shall mean an examination conducted with the use
26 of an instrument or apparatus which records psychophysiological stress responses
27 that are present in a human voice when a person suffers psychological stress in
28 response to a stimulus.

29 * * *

1 §574.4.3. Parole requirements for certain sex offenders

2 * * *

3 F.(1) In cases where the offender has been convicted of or where
4 adjudication has been deferred or withheld for the perpetration or attempted
5 perpetration of a sex offense as defined in R.S. 15:541 and the victim of that offense
6 is a minor, the board may, as an additional condition of parole, authorize the use of
7 truth verification examinations to determine if the offender has violated a condition
8 of parole. If ordered by the board as a condition of parole, the Department of Public
9 Safety and Corrections, division of probation and parole, is hereby authorized to
10 administer a truth verification examination pursuant to the board's order and the
11 provisions of this Subsection.

12 (2) Any examination conducted pursuant to the provisions of this Subsection
13 shall be subsequent to an allegation that the offender has violated a condition of
14 parole or at the discretion of the parole officer who has reason to believe that the
15 offender has violated a condition of parole.

16 (3) The truth verification examination shall be conducted by a trained
17 certified polygraphist or voice stress examiner.

18 (4) The results of the truth verification examination may be considered in
19 determining the level of supervision and treatment needed by the offender and in the
20 determination of the parole officer as to whether the offender has violated a
21 condition of parole; however, such results shall not be used by the board as the basis
22 for a finding that a violation of a condition of parole has occurred.

23 (5) The sexual offender may request a second truth verification examination
24 to be conducted by a trained and certified polygraphist or voice stress examiner of
25 his choice. The cost of the second examination shall be borne by the offender.

26 (6) For purposes of this Subsection:

27 (a) "Polygraph examination" shall mean an examination conducted with the
28 use of an instrument or apparatus for simultaneously recording cardiovascular
29 pressure, pulse and respiration, and variations in electrical resistance of the skin.

1 (b) "Truth verification examination" shall include a polygraph examination
2 or a voice stress analysis.

3 (c) "Voice stress analysis" shall mean an examination conducted with the use
4 of an instrument or apparatus which records psychophysiological stress responses
5 that are present in a human voice when a person suffers psychological stress in
6 response to a stimulus.

7 Section 2. Code of Criminal Procedure Article 895(I), (J), (K), (L), and (M) are
8 hereby amended and reenacted and Code of Criminal Procedure Article 895(N) is hereby
9 enacted to read as follows:

10 Art. 895. Conditions of probation

11 * * *

12 I.(1) In cases where the defendant has been convicted of or where
13 adjudication has been deferred or withheld for the perpetration or attempted
14 perpetration of a sex offense as defined in R.S. 15:541 and the victim of that offense
15 is a minor, the court may, as an additional condition of probation, authorize the use
16 of truth verification examinations to determine if the defendant has violated a
17 condition of probation. If ordered by the court as a condition of probation, the
18 Department of Public Safety and Corrections, division of probation and parole, is
19 hereby authorized to administer a truth verification examination pursuant to the court
20 order and the provisions of this Paragraph.

21 (2) Any examination conducted pursuant to the provisions of this Paragraph
22 shall be subsequent to an allegation that the defendant has violated a condition of
23 probation or at the discretion of the probation officer who has reason to believe that
24 the defendant has violated a condition of probation.

25 (3) The truth verification examination shall be conducted by a trained and
26 certified polygraphist or voice stress examiner.

27 (4) The results of the truth verification examination may be considered in
28 determining the level of supervision and treatment needed by the defendant and in
29 the determination of the probation officer as to whether the defendant has violated

1 a condition of probation; however, such results shall not be used as evidence in court
2 to prove that a violation of a condition of probation has occurred.

3 (5) The sexual offender may request a second truth verification examination
4 to be conducted by a trained and certified polygraphist or voice stress examiner of
5 his choice. The cost of the second examination shall be borne by the offender.

6 (6) For purposes of this Article:

7 (a) "Polygraph examination" shall mean an examination conducted with the
8 use of an instrument or apparatus for simultaneously recording cardiovascular
9 pressure, pulse and respiration, and variations in electrical resistance of the skin.

10 (b) "Truth verification examination" shall include a polygraph examination
11 or a voice stress analysis.

12 (c) "Voice stress analysis" shall mean an examination conducted with the use
13 of an instrument or apparatus which records psychophysiological stress responses
14 that are present in a human voice when a person suffers psychological stress in
15 response to a stimulus.

16 F. J. The defendant shall be given a certificate setting forth the conditions of
17 his probation and shall be required to agree in writing to the conditions.

18 F. K. In cases where the defendant has been convicted of an offense involving
19 criminal sexual activity, the court shall order as a condition of probation that the
20 defendant successfully complete a sex offender treatment program. As part of the
21 sex offender treatment program, the offender shall participate with a victim impact
22 panel or program providing a forum for victims of criminal sexual activity and sex
23 offenders to share experiences on the impact of the criminal sexual activity in their
24 lives. The Department of Public Safety and Corrections shall establish guidelines
25 to implement victim impact panels where, in the judgment of the licensed
26 professional responsible for the sexual treatment program, appropriate victims are
27 available, and shall establish guidelines for other programs where such victims are
28 not available. All costs for the sex offender treatment program shall be paid by the
29 offender.

1 ~~K.L.~~ A conviction for any offense involving criminal sexual activity as
 2 provided for in Paragraph H of this Article, includes a conviction for an equivalent
 3 offense under the laws of another state. Criminal sexual offenders under the
 4 supervision and legal authority of the Department of Public Safety and Corrections
 5 pursuant to the terms and conditions of the interstate compact agreement provided
 6 for in R.S. ~~15:574.14~~ 15:574.31 et seq. shall be notified of the registration
 7 requirements provided for in this Article at the time the department accepts
 8 supervision and has legal authority of the individual.

9 ~~E.M.~~(1) In all cases where the defendant has been convicted of an offense
 10 of domestic abuse as provided in R.S. 46:2132(3) to a family or household member
 11 as provided in R.S. 46:2132(4), or of an offense of dating violence as provided in
 12 R.S. 46:2151(C) to a dating partner as provided in R.S. 46:2151(B), the court shall
 13 order that the defendant submit to and successfully complete a court-approved course
 14 of counseling or therapy related to family or dating violence, for all or part of the
 15 period of probation. If the defendant has already completed such a counseling
 16 program, said counseling requirement shall be required only upon a finding by the
 17 court that such counseling or therapy would be effective in preventing future
 18 domestic abuse or dating violence.

19 (2) All costs for the counseling or therapy shall be paid by the offender. In
 20 addition, the court may order that the defendant pay an amount not to exceed one
 21 thousand dollars to a family violence program located in the parish where the offense
 22 of domestic abuse occurred.

23 ~~M.N.~~ If a defendant is injured or suffers other loss in the performance of
 24 community service work required as a condition of probation, neither the state nor
 25 any political subdivision, nor any officer, agent, or employee of the state or political
 26 subdivision shall be liable for any such injury or loss, unless the injury or loss was
 27 caused by the gross negligence or intentional acts of the officer, agent, or employee
 28 of the state or political subdivision. No provision of this Paragraph shall negate any
 29 requirement that an officer, agent, or employee secure proper and appropriate

- 1 medical assistance for a defendant who is injured while performing community
 2 service work and in need of immediate medical attention.

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)]

Johnson

HB No. 338

Abstract: Authorizes the use of truth verification examinations for certain sex offenders who are on probation and parole.

Present law provides for certain conditions of probation and parole imposed upon certain sex offenders.

Proposed law authorizes the use of truth verification examinations for sex offenders convicted of a sex offense where the victim was a minor, if ordered by the court or the Board of Parole, in order to determine whether the offender has violated a condition of his probation or parole.

Proposed law provides that the truth verification examination shall be subsequent to an allegation, or at the discretion of the probation or parole officer who has reason to believe, that the sexual offender has violated a condition of probation or parole.

Proposed law provides that the truth verification examination shall be conducted by a trained and certified polygraphist or voice stress examiner.

Proposed law provides that the results of the truth verification examination shall not be used as evidence in court or by the Board of Parole to prove that a violation of a condition of probation or parole has occurred.

Proposed law authorizes the offender to request a second truth verification examination to be conducted by a trained and certified examiner of the offender's choice and at the offender's cost.

Proposed law provides definitions for the following: "polygraph examination", "truth verification examinations", and "voice stress analysis".

(Amends C.Cr.P. Art. 895(I), (J), (K), (L), and (M); Adds R.S. 15:538(E) and 574.4.3(F) and C.Cr.P. Art. 895(N))

Summary of Amendments Adopted by House

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

1. Added provision which authorizes the offender to request a second truth verification examination at his expense.