

ACT No. 197

Regular Session, 2012

HOUSE BILL NO. 441

BY REPRESENTATIVE ABRAMSON

1 AN ACT

2 To amend and reenact R.S. 14:40.2(F), (G), (H), and (I), R.S. 46:2136(D) and (F), and Code
3 of Criminal Procedure Article 327.1 and to enact R.S. 14:40.2(J) and Code of
4 Criminal Procedure Article 335.2, relative to the issuance of abuse prevention orders;
5 to provide relative to abuse prevention orders in cases of domestic abuse and
6 stalking; to provide relative to the effective term of certain portions of a protective
7 order in cases of domestic abuse; to provide for procedures; to provide for a hearing
8 and notice; to provide for conditions of release in stalking cases; and to provide for
9 related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 14:40.2(F), (G), (H), and (I) are hereby amended and reenacted and
12 R.S. 14:40.2(J) is hereby enacted to read as follows:

13 §40.2. Stalking

14 * * *

15 F.(1) Upon motion of the district attorney or on the court's own motion,
16 whenever it is deemed appropriate for the protection of the victim, the court may, in
17 addition to any penalties imposed pursuant to the provisions of this Section, grant a
18 protective order which directs the defendant to refrain from abusing, harassing,
19 interfering with the victim or the employment of the victim, or being physically
20 present within a certain distance of the victim.

21 (2) Any protective order granted pursuant to the provisions of this
22 Subsection shall be served on the defendant at the time of sentencing.

23 (3)(a) The court shall order that the protective order be effective either for
24 an indefinite period of time or for a fixed term which shall not exceed eighteen
25 months.

1 **(b) If the court grants the protective order for an indefinite period of time**
2 **pursuant to Subparagraph (a) of this Paragraph, after a hearing, on the motion of any**
3 **party and for good cause shown, the court may modify the indefinite effective period**
4 **of the protective order to be effective for a fixed term, not to exceed eighteen**
5 **months, or to terminate the effectiveness of the protective order. A motion to modify**
6 **or terminate the effectiveness of the protective order may be granted only after a**
7 **good faith effort has been made to provide reasonable notice of the hearing to the**
8 **victim, the victim's designated agent, or the victim's counsel, and either of the**
9 **following occur:**

10 **(i) The victim, the victim's designated agent, or the victim's counsel is**
11 **present at the hearing or provides written waiver of such appearance.**

12 **(ii) After a good faith effort has been made to provide reasonable notice of**
13 **the hearing, the victim could not be located.**

14 **(4)(a) Immediately upon granting a protective order, the court shall cause to**
15 **have prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2,**
16 **shall sign such order, and shall forward it to the clerk of court for filing, without**
17 **delay.**

18 **(b) The clerk of the issuing court shall send a copy of the Uniform Abuse**
19 **Prevention Order or any modification thereof to the chief law enforcement official**
20 **of the parish where the victim resides. A copy of the Uniform Abuse Prevention**
21 **Order shall be retained on file in the office of the chief law enforcement officer as**
22 **provided in this Subparagraph until otherwise directed by the court.**

23 **(c) The clerk of the issuing court shall transmit the Uniform Abuse**
24 **Prevention Order, or any modification thereof, to the Louisiana Protective Order**
25 **Registry pursuant to R.S. 46:2136.2, by facsimile transmission, mail, or direct**
26 **electronic input, where available, as expeditiously as possible, but no later than the**
27 **end of the next business day after the order is filed with the clerk of court.**

28 **F.G.** The provisions of this Section shall not apply to a private investigator
29 licensed pursuant to the provisions of Chapter 56 of Title 37 of the Louisiana

1 Revised Statutes of 1950, acting during the course and scope of his employment and
2 performing his duties relative to the conducting of an investigation.

3 G.H. The provisions of this Section shall not apply to an investigator
4 employed by an authorized insurer regulated pursuant to the provisions of Title 22
5 of the Louisiana Revised Statutes of 1950, acting during the course and scope of his
6 employment and performing his duties relative to the conducting of an insurance
7 investigation.

8 H.I. The provisions of this Section shall not apply to an investigator
9 employed by an authorized self-insurance group or entity regulated pursuant to the
10 provisions of Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950,
11 acting during the course and scope of his employment and performing his duties
12 relative to the conducting of an insurance investigation.

13 I.J. A conviction for stalking shall not be subject to expungement as
14 provided for by R.S. 44:9.

15 Section 2. R.S. 46:2136(D) and (F) are hereby amended and reenacted to read as
16 follows:

17 §2136. Protective orders; content; modification; service

18 * * *

19 D.(1) On the motion of any party, the court, after notice to the other parties
20 and a hearing, may modify a prior order to exclude any item included in the prior
21 order, or to include any item that could have been included in the prior order.

22 (2) On the motion of any party, after a hearing, the court may modify the
23 effective period of a protective order pursuant to Paragraph (F)(2) of this Section.

24 * * *

25 F.(1) Any Except as provided in Paragraph (2) of this Subsection, any final
26 protective order or approved consent agreement shall be for a fixed period of time,
27 not to exceed eighteen months, and may be extended by the court, after a
28 contradictory hearing, in its discretion. Such protective order or extension thereof
29 shall be subject to a devolutive appeal only.

1 (2)(a) For any protective order granted by the court which directs the
 2 defendant to refrain from abusing, harassing, or interfering with the person as
 3 provided in R.S. 46:2135(A)(1), the court may grant the order to be effective for an
 4 indefinite period of time as provided by the provisions of this Paragraph on its own
 5 motion or by motion of the petitioner. The indefinite period shall be limited to the
 6 portion of the protective order which directs the defendant to refrain from abusing,
 7 harassing, or interfering with the person as provided in R.S. 46:2135(A)(1).

8 (b) The hearing for this motion shall be conducted concurrently with the
 9 hearing for the rule to show cause why the protective order should not be issued.

10 (c) Any motion to modify the indefinite effective period of the protective
 11 order as provided in Subparagraph (a) of this Paragraph may be granted only after
 12 a good faith effort has been made to provide reasonable notice of the hearing to the
 13 victim, the victim's designated agent, or the victim's counsel, and either of the
 14 following occur:

15 (i) The victim, the victim's designated agent, or the victim's counsel is
 16 present at the hearing or provides written waiver of such appearance.

17 (ii) After a good faith effort has been made to provide reasonable notice of
 18 the hearing, the victim could not be located.

19 * * *

20 Section 3. Code of Criminal Procedure Article 327.1 is hereby amended and
 21 reenacted and Code of Criminal Procedure Article 335.2 is hereby enacted to read as
 22 follows:

23 Art. 327.1. Bail restrictions to be transmitted to Louisiana Protective Order Registry

24 If, as part of a bail restriction, an order is issued for the purpose of preventing
 25 violent or threatening acts or harassment against, or contact or communication with
 26 or physical proximity to, another person for the purpose of preventing domestic
 27 abuse, stalking, or dating violence, the judge shall cause to have prepared a Uniform
 28 Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall sign such order, and
 29 shall forward it to the clerk of court for filing, all without delay. The clerk of the
 30 issuing court shall transmit the Uniform Abuse Prevention Order to the Louisiana

1 Protective Order Registry, R.S. 46:2136.2(A), by facsimile transmission, mail, or
 2 direct electronic input, where available, as expeditiously as possible, but no later than
 3 the end of the next business day after the order is filed with the clerk of court.

4 * * *

5 Art. 335.2. Stalking; conditions of release

6 A. In determining conditions of release of a defendant who is alleged to have
 7 committed the crime of stalking pursuant to the provisions of R.S. 14:40.2, the court
 8 shall consider whether the defendant poses a threat or danger to the victim. If the
 9 court determines that the defendant poses such a threat or danger, it shall require as
 10 a condition of bail that the defendant refrain from going to the residence or
 11 household of the victim, the victim's school, and the victim's place of employment,
 12 or otherwise contacting the victim in any manner whatsoever, and shall refrain from
 13 having any further contact with the victim.

14 B. A violation of the conditions of release may be punishable by the
 15 forfeiture of bail and issuance of a bench warrant for the arrest of the defendant or
 16 remanding the defendant to custody or a modification of the terms of bail.

17 C. If, as part of a bail restriction, an order is issued pursuant to the provisions
 18 of this Article, the judge shall cause to have prepared a Uniform Abuse Prevention
 19 Order, as provided in R.S. 46:2136.2, shall sign such order, and shall forward it to
 20 the clerk of court for filing, all without delay. The clerk of the issuing court shall
 21 transmit the Uniform Abuse Prevention Order to the Louisiana Protective Order
 22 Registry, R.S. 46:2136.2(A), by facsimile transmission, mail, or direct electronic

1 input, where available, as expeditiously as possible, but no later than the end of the
2 next business day after the order is filed with the clerk of court.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____