

2022 Regular Session

HOUSE BILL NO. 560

BY REPRESENTATIVE FREEMAN

(On Recommendation of the Louisiana State Law Institute)

DOMESTIC ABUSE: Provides for consistency in the Domestic Abuse Assistance Act in the Children's Code

1 AN ACT

2 To amend and reenact Children's Code Articles 1565, 1566(A), 1567(A), 1568, 1569, 1570,
3 and 1573, to enact Children's Code Article 1570.2, and to repeal Children's Code
4 Articles 1566(C) and 1571, relative to domestic abuse; to provide for definitions; to
5 provide for venue; to provide for temporary restraining orders; to provide for the use
6 of hearing officers; to provide for the effective period of a protective order; to
7 provide for law enforcement duties; to repeal certain notice provisions; to provide
8 for the prohibition of firearms; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Children's Code Articles 1565, 1566(A), 1567(A), 1568, 1569, 1570, and
11 1573 are hereby amended and reenacted and Children's Code Article 1570.2 is hereby
12 enacted to read as follows:

13 Art. 1565. Definitions

14 As used in this Chapter:

15 (1) "Domestic abuse" includes but is not limited to physical or sexual abuse
16 and any offense against the person, physical or nonphysical, as defined in ~~Chapter~~
17 ~~1 of Title 14 of the Louisiana Revised Statutes of 1950~~ the Criminal Code of
18 Louisiana, except negligent injury and defamation, committed by one family or
19 household member against another.

1 (2) "Domestic abuse advocate" means an employee or representative of a
2 community-based shelter providing services to victims of domestic abuse.

3 (3) "Family or household member" means spouses, former spouses, parents
4 and children, stepparents, stepchildren, foster parents, foster children, other
5 ascendants, other descendants, and any person living in the same residence with the
6 defendant as a spouse whether married or not if a child or children also live in the
7 residence, who are seeking protection under this Chapter. "Family member" also
8 means the other parent or foster parent of any child or foster child of the offender.

9 (4) "Firearm" means any pistol, revolver, rifle, shotgun, machine gun,
10 submachine gun, black powder weapon, or assault rifle which is designed to fire or
11 is capable of firing fixed cartridge ammunition or from which a shot or projectile is
12 discharged by an explosive.

13 Art. 1566. Assistance; clerk of court; domestic abuse advocate

14 A. The clerk of court shall make forms available for making application for
15 protective orders under this Chapter, provide clerical assistance to the petitioner
16 when necessary, advise indigent applicants of the availability of filing in forma
17 pauperis, provide the necessary forms, and provide the services of a notary, where
18 available, for completion of the affidavit required in Article 1568. The forms shall
19 be prepared by the ~~Judicial Administrator's Office~~ judicial administrator's office,
20 Louisiana Supreme Court.

21 * * *

22 Art. 1567. Venue; standing

23 A. Venue lies ~~in either~~:

24 (1) ~~The~~ In the parish ~~in which~~ where the marital domicile is located or ~~in~~
25 ~~which~~ where the household is located.

26 (2) ~~The~~ In the parish ~~in which~~ where the defendant resides.

27 (3) ~~The~~ In the parish ~~in which~~ where the abuse is alleged to have been
28 committed.

1 (4) For purposes of issuing an order pursuant to ~~Article 1569(A)(1)~~ only, the
2 In the parish in which where the petitioner resides.

3 (5) ~~The~~ In the parish in which where an action for an annulment of marriage
4 or for a divorce could be brought pursuant to the Code of Civil Procedure.

5 * * *

6 Art. 1568. Petition

7 A. A petition filed under the provisions of this Chapter shall contain the
8 following:

9 (1)(a) The name of each petitioner and each person on whose behalf the
10 petition is filed and the name, address, and parish of residence of each individual
11 alleged to have committed abuse, if known.

12 ~~(2)~~(a) If the petition is being filed on behalf of a child or person alleged to
13 be incompetent, the relationship between that person and the petitioner.

14 ~~(3)~~(2) The facts and circumstances concerning the alleged abuse.

15 ~~(4)~~(3) The relationship between each petitioner and each individual alleged
16 to have committed abuse.

17 ~~(5)~~(4) A request for one or more protective orders ~~or a temporary restraining~~
18 ~~order.~~

19 (5) If desired, a request for a competent interpreter for a non-English-
20 speaking principal party or witness to the proceeding.

21 B. The address and parish ~~of residence~~ of each petitioner and each person on
22 whose behalf the petition is filed may remain confidential with the court.

23 C. If the petition requests a protective order for a spouse and alleges that the
24 other spouse has committed abuse, the petition shall state whether a suit for divorce
25 is pending.

26 D. If the petition requests the issuance of an ex parte temporary restraining
27 order, the petition shall contain a written affirmation signed and dated by each
28 petitioner that the facts and circumstances contained in the petition are true and
29 correct to the best knowledge, information, and belief of the petitioner, under penalty

1 of perjury pursuant to R.S. 14:123. The affirmation shall be made before a witness
2 who shall sign and print his name.

3 E. If a suit for divorce is pending, any application for a protective order shall
4 be filed in that proceeding and shall be heard within the delays provided by this
5 Chapter. Any decree issued in a divorce proceeding filed subsequent to ~~the filing of~~
6 a petition filed or an order issued pursuant to this Chapter may, in the discretion of
7 the court hearing the divorce proceeding, supersede in whole or in part the orders
8 issued pursuant to this Chapter. Such subsequent decree shall be forwarded by the
9 rendering court to the court having jurisdiction of the petition for a protective order
10 and shall be made a part of the record thereof. The findings and rulings made in
11 connection with such protective orders shall not be res judicata in any subsequent
12 proceeding.

13 F. If the court orders the issuance of a temporary restraining order, the
14 defendant may be cast for all costs.

15 Art. 1569. Temporary restraining order

16 A. Upon good cause shown in an ex parte proceeding, the court may enter
17 a temporary restraining order, without bond, as it deems necessary to protect from
18 abuse the petitioner, any children, or any person alleged to be an incompetent.
19 ~~Immediate~~ Any showing of immediate and present danger of abuse shall constitute
20 good cause for purposes of this Article. The court shall consider any and all past
21 history of abuse, or threats thereof, in determining the existence of an immediate and
22 present danger of abuse. There is no requirement that the abuse itself be recent,
23 immediate, or present. The order may include but is not limited to the following:

24 (1)(a) Directing the defendant to refrain from abusing, harassing, or
25 interfering with the person or employment or going near the residence or place of
26 employment of the petitioner, the children, or any person alleged to be incompetent,
27 on whose behalf a petition was filed under this Chapter.

28 (b) ~~Directing the defendant to refrain from activities associated with a~~
29 ~~coerced abortion as defined in Article 603.~~

1 (2) Awarding to a party ~~the~~ use and possession of specified ~~community~~
2 jointly owned or leased property, such as an automobile.

3 (3) Granting possession to the petitioner of the residence or household to the
4 exclusion of the defendant, by evicting the defendant or restoring possession to the
5 petitioner ~~when either~~ where any of the following apply:

6 (a) The residence is jointly owned in equal proportion or leased by the
7 defendant and the petitioner or the person on whose behalf the petition is brought.

8 (b) The residence is solely owned by the petitioner or the person on whose
9 behalf the petition is brought.

10 (c) The residence is solely leased by defendant and defendant has a duty to
11 support the petitioner or the person on whose behalf the petition is brought.

12 (4) Prohibiting either party from the transferring, encumbering, or otherwise
13 disposing of property mutually owned or leased by the parties, except when in the
14 ordinary course of business, or for the necessary support of the party or the ~~minor~~
15 children.

16 (5) Awarding temporary custody of children or persons alleged to be
17 incompetent.

18 (6) Awarding or restoring possession to the petitioner of all separate property
19 and all personal property, including but not limited to telephones or other
20 communication equipment, ~~computer~~ computers, medications, clothing, toiletries,
21 social security cards, birth certificates or other forms of identification, tools of the
22 trade, ~~checkbook~~ checkbooks, keys, ~~automobile~~ automobiles, photographs, jewelry,
23 or any other items or personal effects of the petitioner and restraining the defendant
24 from transferring, encumbering, concealing, or disposing of the personal or separate
25 property of the petitioner.

26 (7) Granting to the petitioner the exclusive care, possession, or control of any
27 pets belonging to or under the care of the petitioner or ~~minor~~ children residing in the
28 residence or household of either party, and directing the defendant to refrain from
29 harassing, interfering with, abusing or injuring any pet, without legal justification,

1 known to be owned, possessed, leased, kept, or held by either party or a ~~minor~~ child
2 residing in the residence or household of either party.

3 B. If a temporary restraining order is granted without notice, the matter shall
4 be set within twenty-one days for a rule to show cause why the protective order
5 should not be issued, at which time the petitioner ~~must~~ shall prove the allegations of
6 abuse by a preponderance of the evidence. The defendant shall be given notice of
7 the temporary restraining order and the hearing on the rule to show cause by service
8 of process as required by law within twenty-four hours of the issuance of the order.

9 C. During the existence of the temporary restraining order, a party shall have
10 the right to return to the family residence once to recover his or her personal clothing
11 and necessities, provided that the party is accompanied by a law enforcement officer
12 to ~~insure~~ ensure the protection and safety of the parties.

13 D. If no temporary restraining order has been granted, the court shall issue
14 a rule to show cause why the protective order should not be issued, and set the rule
15 for hearing on the earliest day that the business of the court will permit, but in any
16 case within ten days from the date of service of the petition, at which time the
17 petitioner ~~must~~ shall prove the allegations of abuse by a preponderance of the
18 evidence. The defendant shall be given notice by service of process as required by
19 law.

20 E. If the hearing pursuant to Paragraph B or D of this Article is continued,
21 the court shall make or extend such temporary restraining ~~order~~ orders as it deems
22 necessary. Any continuance of a hearing ordered pursuant to Paragraph B or D of
23 this Article shall not exceed fifteen days, unless good cause is shown for further
24 continuance.

25 F. The court may, in its discretion, grant an emergency temporary restraining
26 order outside regular court hours.

27 H.G. Immediately upon ~~rendering a decision granting the relief requested by~~
28 ~~the petitioner~~ entering a temporary restraining order, the judge shall cause to have
29 prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall

1 sign such order, and shall immediately forward it to the clerk of court for filing on
2 the day that the order is issued.

3 ~~I.H. If a temporary restraining order is issued or extended, the~~ The clerk of
4 the issuing court shall transmit the Uniform Abuse Prevention Order to the ~~Judicial~~
5 ~~Administrator's Office~~ judicial administrator's office, Louisiana Supreme Court, for
6 entry into the Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A),
7 by facsimile transmission or direct electronic input as expeditiously as possible, but
8 no later than the end of the next business day after the order is filed with the clerk
9 of court. The clerk of the issuing court shall also send a copy of the Uniform Abuse
10 Prevention Order, as provided in R.S. 46:2136.2(C), or any modification thereof, to
11 the chief law enforcement officer of the parish where the person or persons protected
12 by the order reside by facsimile transmission or direct electronic input as
13 expeditiously as possible, but no later than the end of the next business day after the
14 order is filed with the clerk of court. A copy of the Uniform Abuse Prevention Order
15 shall be reviewed by the law enforcement agency and shall be retained on file in the
16 office of the chief law enforcement officer until otherwise directed by the court.

17 I. The initial rule to show cause hearing required pursuant to Paragraph B or
18 D of this Article may be conducted by a hearing officer who is qualified and selected
19 in the same manner provided in R.S. 46:236.5(C). The hearing officer shall be
20 subject to the applicable limitations and shall follow the applicable procedures
21 provided in R.S. 46:236.5(C). The hearing officer shall make recommendations to
22 the court as to the action that should be taken in the matter.

23 J. Upon filing a petition for a temporary restraining order, regardless of
24 whether the court grants the temporary restraining order, the clerk of court shall
25 notify the petitioner of his right to initiate criminal proceedings and shall inform the
26 petitioner that the granting of a temporary restraining order pursuant to the
27 provisions of this Article does not automatically file criminal charges against the
28 defendant.

1 Art. 1570. Protective orders; content; modification; service

2 A. The court may grant any protective order or approve any consent
3 agreement to bring about a cessation of domestic abuse ~~of~~ or the threat or danger
4 thereof to a party, any children, or any person alleged to be incompetent, which relief
5 may include but is not limited to:

6 (1) Granting the relief enumerated in Article 1569.

7 (2) ~~When~~ Where there is a duty to support a party, any ~~minor~~ children, or
8 any person alleged to be incompetent living in the residence or household, ordering
9 payment of temporary support or provision of suitable housing for them or granting
10 possession to the petitioner of the residence or household to the exclusion of the
11 defendant by evicting the defendant or restoring possession to the petitioner where
12 the residence is solely owned by the defendant and the petitioner has been awarded
13 the temporary custody of the children born of the parties.

14 (3) Awarding temporary custody of or establishing temporary visitation
15 rights and conditions with regard to any children or person alleged to be
16 incompetent.

17 (4) ~~Ordering counseling or professional medical treatment for the defendant~~
18 ~~or the abused person, or both.~~

19 (5)(a) Ordering either a medical or mental health evaluation or both of the
20 defendant ~~or the abused person, or both~~, to be conducted by an independent court-
21 appointed evaluator who qualifies as an expert in the field of domestic abuse. The
22 evaluation shall be conducted by a person who has no family, financial, or prior
23 medical or mental health relationship with the defendant ~~or abused person~~, or their
24 ~~attorneys~~ his attorney of record.

25 (b) ~~If the medical evaluation is ordered for both the defendant and abused~~
26 ~~person, two separate evaluators shall be appointed.~~

27 (c) ~~After an independent medical~~ a medical or mental health evaluation has
28 been completed and a report issued, the court may order counseling or other medical
29 or mental health treatment as deemed appropriate.

1 B. A protective order may be rendered pursuant to this Chapter if the court
2 has jurisdiction over the parties and subject matter and either of the following occurs:

3 (1) The parties enter into a consent agreement.

4 (2) Reasonable notice and opportunity to be heard is given to the person
5 against whom the order is sought sufficient to protect that person's right to due
6 process.

7 C. Any protective order issued within this state or outside this state that is
8 consistent with Paragraph B of this Article shall be accorded full faith and credit by
9 the courts of this state and enforced as if it were the order of the enforcing court.

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

13 (2) On the motion of any party, after a hearing, the court may modify the
14 effective period of a protective order pursuant to Subparagraph (F)(2) of this Article.

15 E. A protective order made under this Chapter shall be served on the person
16 to whom the order ~~applied~~ applies in open court at the close of the hearing, or in the
17 same manner as a writ of injunction.

18 F.(1) ~~Any~~ Except as provided in Subparagraph (2) of this Paragraph, any
19 final protective order or approved consent agreement shall be for a fixed period of
20 time, not to exceed ~~six~~ eighteen months, and may be extended by the court, after a
21 contradictory hearing, in its discretion. ~~When such order or agreement is for the~~
22 ~~protection of a child under the age of eighteen who has been sexually molested, the~~
23 ~~period shall last at least until the child attains the age of eighteen years, unless~~
24 ~~otherwise modified or terminated following a contradictory hearing.~~ Such protective
25 order or extension thereof shall be subject to a devolutive appeal only.

26 (2)(a) For any protective order granted by the court that directs the defendant
27 to refrain from abusing, harassing, or interfering with the person as provided in
28 Article 1569(A)(1), the court may grant the order to be effective for an indefinite
29 period of time as provided by the provisions of this Subparagraph on its own motion

1 or by motion of the petitioner. The indefinite period shall be limited to the portion
2 of the protective order that directs the defendant to refrain from abusing, harassing,
3 or interfering with the person.

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

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

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

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

15 G. Immediately upon ~~rendering a decision granting the relief requested by~~
16 ~~the petitioner~~ a protective order or approving any consent agreement, the judge shall
17 cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S.
18 46:2136.2(C), shall sign such order, and shall immediately forward it to the clerk of
19 court for filing on the day that the order is issued.

20 H. ~~If a protective order is issued or modified, or a consent agreement is~~
21 ~~agreed to or modified, the~~ The clerk of the issuing court shall transmit the Uniform
22 Abuse Prevention Order to the ~~Judicial Administrator's Office~~ judicial
23 administrator's office, Louisiana Supreme Court, for entry into the Louisiana
24 Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile
25 transmission or direct electronic input as expeditiously as possible, but no later than
26 the end of the next business day after the order is filed with the clerk of court. The
27 clerk of the issuing court shall also send a copy of the Uniform Abuse Prevention
28 Order, as provided in R.S. 46:2136.2(C), or any modification thereof, to the chief
29 law enforcement officer of the parish where the person or persons protected by the

1 order reside by facsimile transmission or direct electronic input as expeditiously as
2 possible, but no later than the end of the next business day after the order is filed
3 with the clerk of court. A copy of the Uniform Abuse Prevention Order shall be
4 reviewed by the law enforcement agency and shall be retained on file in the office
5 of the chief law enforcement officer until otherwise directed by the court.

6 I. ~~A court shall not grant a mutual order for protection to opposing parties.~~
7 ~~However, nothing contained in this Paragraph shall be construed to prohibit the court~~
8 ~~from granting a protective order to a party in a subsequently filed Petition for~~
9 ~~Domestic Abuse Assistance provided that the provisions contained in R.S.~~
10 ~~46:2136(B) have been met.~~ At the proceeding, regardless of whether the court grants
11 the protective order, the court shall notify the petitioner of his right to initiate
12 criminal proceedings and shall inform the petitioner that the granting of a protective
13 order pursuant to the provisions of this Article does not automatically file criminal
14 charges against the defendant.

15 * * *

16 Art. 1570.2. Prohibition on the possession of firearms by a person against whom a
17 protective order is issued

18 A. Any person against whom the court has issued a protective order pursuant
19 to a court-approved consent agreement or pursuant to the provisions of Article 1570
20 shall be prohibited from possessing a firearm or carrying a concealed weapon for the
21 duration of the protective order if both of the following occur:

22 (1) The protective order includes a finding that the person subject to it
23 represents a credible threat to the physical safety of a family or household member.

24 (2) The protective order informs the person subject to it that the person is
25 prohibited from possessing a firearm pursuant to the provisions of 18 U.S.C.
26 922(g)(8) and this Article.

27 B. Whoever violates the provisions of this Article shall be in violation of and
28 subject to the penalties set forth in R.S. 14:79.

29 * * *

1 Art. 1573. Law enforcement officers; duties

2 A. ~~Whenever~~ If a law enforcement officer has reason to believe that a family
3 or household member has been abused ~~and the abusing party is in violation of a~~
4 temporary restraining order or a protective order issued pursuant to this Chapter, the
5 officer shall immediately arrest the abusing party.

6 B. If a law enforcement officer has reason to believe that a family or
7 household member has been abused, and the abusing party is not in violation of a
8 restraining order or a protective order, the officer shall immediately use all
9 reasonable means to prevent further abuse, including:

10 (1) Arresting the abusive party with a warrant or without a warrant pursuant
11 to Code of Criminal Procedure Article 213 ~~of the Code of Criminal Procedure~~, if
12 probable cause exists to believe that ~~aggravated or second degree battery~~ a felony has
13 been committed by that person, whether or not the offense occurred in the officer's
14 presence.

15 (2) Arresting the abusive party in case of ~~simple assault, aggravated assault,~~
16 ~~or simple battery~~, any misdemeanor crime that endangers the physical safety of the
17 abused person whether or not the offense occurred in the presence of the officer;
18 ~~when the officer reasonably believes there is impending danger to the physical safety~~
19 ~~of the abused person in the officer's absence.~~ If there is no cause to believe there is
20 impending danger, arresting the abusive party is at the officer's discretion.

21 (3) Assisting the abused person in obtaining medical treatment necessitated
22 by the battery, or arranging for, ~~or~~ providing, or assisting in the procurement of
23 transportation for the abused person to a place of shelter or safety.

24 (4) Notifying the abused person of his right to initiate criminal or civil
25 proceedings, the availability of the protective order pursuant to Article 1570, and the
26 availability of community assistance for domestic violence victims.

27 C.(1) When a law enforcement officer receives conflicting accounts of
28 domestic abuse, the officer shall evaluate each account separately to determine if one
29 party was the predominant aggressor.

1 (2) In determining if one party is the predominant aggressor, the law
2 enforcement officer may consider any other relevant factors, but shall consider the
3 following factors based upon observation:

4 (a) Evidence from complainants and other witnesses.

5 (b) The extent of personal injuries received by each person.

6 (c) Whether a person acted in self-defense.

7 (d) An imminent threat of future injury to any of the parties.

8 (e) Prior complaints of domestic abuse, if that history can be reasonably
9 ascertained by the officer.

10 (f) The future welfare of any children who are present at the scene.

11 (g) The existence of a temporary restraining order or a protective order
12 issued pursuant to this Chapter. The officer shall presume that the predominant
13 aggressor is the person against whom the order was issued.

14 (3)(a) If the officer determines that one person was the predominant
15 aggressor in a felony offense, the officer shall arrest that person. The arrest shall be
16 subject to the laws governing arrest, including the need for probable cause as
17 otherwise provided by law.

18 (b) If the officer determines that one person was the predominant aggressor
19 in a misdemeanor offense, the officer shall arrest the predominant aggressor if there
20 is reason to believe that there is impending danger or if the predominant aggressor
21 is in violation of a temporary restraining order or a protective order issued pursuant
22 to this Chapter. If there is no threat of impending danger or no violation of a
23 temporary restraining order or a protective order, the officer may arrest the
24 predominant aggressor at the officer's discretion, whether or not the offense occurred
25 in the presence of the officer. An arrest pursuant to the provisions of this
26 Subsubparagraph shall be subject to the laws governing arrest, including the need for
27 probable cause as otherwise provided by law. The exceptions provided by this
28 Article shall apply.

1 Section 2. Children's Code Articles 1566(C) and 1571 are hereby repealed in their
2 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)]

HB 560 Original

2022 Regular Session

Freeman

Abstract: Provides for consistency between the Domestic Abuse Assistance Act in Title 46 and the Domestic Abuse Assistance Act in the Children's Code.

Present law provides a Domestic Abuse Assistance Act in R.S. 46:2131 through 2143 and a Domestic Abuse Assistance Act in Children's Code Articles 1564 through 1575.

Proposed law amends the Domestic Abuse Assistance Act in the Children's Code to make it consistent with the Domestic Abuse Assistance Act in Title 46.

(Amends Ch.C. Arts. 1565, 1566(A), 1567(A), 1568, 1569, 1570, and 1573; Adds Ch.C. Art. 1570.2; Repeals Ch.C. Arts. 1566(C) and 1571)