

2020 Regular Session

HOUSE BILL NO. 544

BY REPRESENTATIVE WHITE

(On Recommendation of the Louisiana State Law Institute)

DOMESTIC ABUSE: Provides for consistency in the Domestic Abuse Assistance Act

1 AN ACT

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

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Children's Code Articles 1565, 1566(A), 1567(A)(4), 1568, 1569, 1570,  
12 and 1573 are hereby amended and reenacted, and Children's Code Article 1570.2 is hereby  
13 enacted, to read as follows:

14 Art. 1565. Definitions

15 As used in this Chapter:

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



1           (1) The name of each petitioner and each person on whose behalf the petition  
2 is filed, and the name, address, and parish of residence of each individual alleged to  
3 have committed abuse, if known;

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

6           ~~(3)~~(2) The facts and circumstances concerning the alleged abuse.

7           ~~(4)~~(3) The relationship between each petitioner and each individual alleged  
8 to have committed abuse.

9           ~~(5)~~(4) A request for one or more protective orders ~~or a temporary restraining~~  
10 ~~order.~~

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

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

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

18           D. If the petition requests the issuance of an ex parte temporary restraining  
19 order, the petition shall contain an affidavit signed by each petitioner that the facts  
20 and circumstances contained in the petition are true and correct to the best  
21 knowledge, information, and belief of ~~the~~ petitioner. Any false statement under oath  
22 contained in the affidavit shall constitute perjury and shall be punishable by a fine  
23 of not more than one thousand dollars, or by imprisonment, with or without hard  
24 labor, for not more than five years, or both.

25           E. If a suit for divorce is pending, any application for a protective order shall  
26 be filed in that proceeding and shall be heard within the delays provided by this  
27 Chapter. Any decree issued in a divorce proceeding filed subsequent to ~~the filing of~~  
28 a petition filed or an order issued pursuant to this Chapter may, in the discretion of  
29 the court hearing the divorce proceeding, supersede in whole or in part the orders

1 issued pursuant to this Chapter. Such subsequent decree shall be forwarded by the  
2 rendering court to the court having jurisdiction of the petition for a protective order  
3 and shall be made a part of the record thereof. The findings and rulings made in  
4 connection with such protective orders shall not be res judicata in any subsequent  
5 proceeding.

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

8 Art. 1569. Temporary restraining order

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

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

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

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

25 (3) Granting possession to the petitioner of the residence or household to the  
26 exclusion of the defendant, by evicting the defendant or restoring possession to the  
27 petitioner ~~when either~~ where:

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

1 (b) The residence is solely owned by the petitioner or the person on whose  
2 behalf the petition is brought; or

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

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

9 (5) Awarding temporary custody of children or persons alleged to be  
10 incompetent.

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

19 (7) Granting to the petitioner the exclusive care, possession, or control of any  
20 pets belonging to or under the care of the petitioner or ~~minor~~ children residing in the  
21 residence or household of either party, and directing the defendant to refrain from  
22 harassing, interfering with, abusing or injuring any pet, without legal justification,  
23 known to be owned, possessed, leased, kept, or held by either party or a ~~minor~~ child  
24 residing in the residence or household of either party.

25 B. If a temporary restraining order is granted without notice, the matter shall  
26 be set within twenty-one days for a rule to show cause why the protective order  
27 should not be issued, at which time the petitioner ~~must~~ shall prove the allegations of  
28 abuse by a preponderance of the evidence. The defendant shall be given notice of

1 the temporary restraining order and the hearing on the rule to show cause by service  
2 of process as required by law within twenty-four hours of the issuance of the order.

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

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

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

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

21 ~~H.G.~~ Immediately upon ~~rendering a decision granting the relief requested by~~  
22 ~~the petitioner~~ entering a temporary restraining order, the judge shall cause to have  
23 prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall  
24 sign such order, and shall immediately forward it to the clerk of court for filing on  
25 the day that the order is issued.

26 ~~I.H.~~ If a temporary restraining order is issued or extended, ~~the~~ The clerk of  
27 the issuing court shall transmit the Uniform Abuse Prevention Order to the ~~Judicial~~  
28 ~~Administrator's Office~~ judicial administrator's office, Louisiana Supreme Court, for  
29 entry into the Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A),

1 by facsimile transmission or direct electronic input as expeditiously as possible, but  
2 no later than the end of the next business day after the order is filed with the clerk  
3 of court. The clerk of the issuing court shall also send a copy of the Uniform Abuse  
4 Prevention Order, as provided in R.S. 46:2136.2(C), or any modification thereof, to  
5 the chief law enforcement officer of the parish where the person or persons protected  
6 by the order reside by facsimile transmission or direct electronic input as  
7 expeditiously as possible, but no later than the end of the next business day after the  
8 order is filed with the clerk of court. A copy of the Uniform Abuse Prevention Order  
9 shall be reviewed by the law enforcement agency and shall be retained on file in the  
10 office of the chief law enforcement officer until otherwise directed by the court.

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

17 J. Upon filing a petition for a temporary restraining order, regardless of  
18 whether the court grants the temporary restraining order, the clerk of court shall  
19 notify the petitioner of his right to initiate criminal proceedings and shall inform the  
20 petitioner that the granting of a temporary restraining order pursuant to the  
21 provisions of this Article does not automatically file criminal charges against the  
22 defendant.

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

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

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

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

8           (3) Awarding temporary custody of or establishing temporary visitation  
9 rights and conditions with regard to any children or person alleged to be  
10 incompetent.

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

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

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

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

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

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

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

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

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

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

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

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

20 (2)(a) For any protective order granted by the court which directs the  
21 defendant to refrain from abusing, harassing, or interfering with the person as  
22 provided in Article 1569(A)(1), the court may grant the order to be effective for an  
23 indefinite period of time as provided by the provisions of this Subparagraph on its  
24 own motion or by motion of the petitioner. The indefinite period shall be limited to  
25 the portion of the protective order which directs the defendant to refrain from  
26 abusing, harassing, or interfering with the person.

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

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

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

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

10           G. Immediately upon ~~rendering a decision granting the relief requested by~~  
11           ~~the petitioner~~ a protective order or approving any consent agreement, the judge shall  
12           cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S.  
13           46:2136.2(C), shall sign such order, and shall immediately forward it to the clerk of  
14           court for filing on the day that the order is issued.

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

1 I. A court shall not grant a mutual order for protection to opposing parties.  
 2 ~~However, nothing contained in this Paragraph shall be construed to prohibit the court~~  
 3 ~~from granting a protective order to a party in a subsequently filed Petition for~~  
 4 ~~Domestic Abuse Assistance provided that the provisions contained in R.S.~~  
 5 ~~46:2136(B) have been met.~~ At the proceeding, regardless of whether the court grants  
 6 the protective order, the court shall notify the petitioner of his right to initiate  
 7 criminal proceedings and shall inform the petitioner that the granting of a protective  
 8 order pursuant to the provisions of this Article does not automatically file criminal  
 9 charges against the defendant.

10 \* \* \*

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

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

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

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

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

24 \* \* \*

25 Art. 1573. Law enforcement officers; duties

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

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

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

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

16                   (3) Assisting the abused person in obtaining medical treatment necessitated  
17                   by the battery;<sub>2</sub> or arranging for, ~~or~~ <sub>2</sub> providing, or assisting in the procurement of  
18                   transportation for the abused person to a place of shelter or safety.

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

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

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

28                           (a) Evidence from complainants and other witnesses.

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

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

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

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

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

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

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

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

24           Section 2. Children's Code Articles 1565, 1566(A), 1567(A)(4), 1568, 1569, 1570,  
25 and 1573 are hereby amended and reenacted and Children's Code Article 1570.2 is hereby  
26 enacted to read as follows:

1 Art. 1565. Definitions

2 As used in this Chapter:

3 (1) "~~Domestic abuse~~" ~~includes but is not limited to physical or sexual abuse~~  
4 ~~and any offense against the person as defined in Chapter 1 of Title 14 of the~~  
5 ~~Louisiana Revised Statutes of 1950, except negligent injury and defamation,~~  
6 ~~committed by one family or household member against another~~ shall have the same  
7 meaning as defined in Civil Code Article 162.

8 (2) "~~Family or household member~~" means spouses, former spouses, parents  
9 ~~and children, stepparents, stepchildren, foster parents, foster children, and any person~~  
10 ~~living in the same residence with the defendant as a spouse whether married or not~~  
11 ~~if a child or children also live in the residence, who are seeking protection under this~~  
12 ~~Chapter.~~ "Domestic abuse advocate" means an employee or representative of a  
13 community-based shelter providing services to victims of domestic abuse.

14 (3) "Firearm" means any pistol, revolver, rifle, shotgun, machine gun,  
15 submachine gun, black powder weapon, or assault rifle which is designed to fire or  
16 is capable of firing fixed cartridge ammunition or from which a shot or projectile is  
17 discharged by an explosive.

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

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

26 \* \* \*

27 Art. 1567. Venue; standing

28 A. Venue lies in either:

29 \* \* \*



1 of not more than one thousand dollars<sub>2</sub> or by imprisonment<sub>2</sub> with or without hard  
2 labor<sub>2</sub> for not more than five years, or both.

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 domestic abuse the petitioner, any children, or any person alleged to be an  
19 incompetent. ~~Immediate and present danger of~~ A showing of domestic abuse shall  
20 constitute good cause for purposes of this Article. The court shall consider any and  
21 all past history of domestic abuse, or threats thereof, in determining the existence of  
22 abuse. There is no requirement that the abuse itself be recent, immediate, or present.

23 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 to the petitioner possession ~~to the petitioner~~ of the residence or  
4           household to the exclusion of the defendant, by evicting the defendant or restoring  
5           possession to the petitioner ~~when either~~ if 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 domestic abuse by a preponderance of the evidence. The defendant shall be given  
7 notice of the temporary restraining order and the hearing on the rule to show cause  
8 by service of process as required by law within twenty-four hours of the issuance of  
9 the order.

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

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

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

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

28 H.G. Immediately upon ~~rendering a decision granting the relief requested by~~  
29 ~~the petitioner~~ entering a temporary restraining order, the judge shall cause to have

1 prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall  
2 sign such order, and shall immediately forward it to the clerk of court for filing on  
3 the day that the order is issued.

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

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

24 J. Upon filing a petition for a temporary restraining order, regardless of  
25 whether the court grants the temporary restraining order, the clerk of court shall  
26 notify the petitioner of his right to initiate criminal proceedings and shall inform the  
27 petitioner that the granting of a temporary restraining order pursuant to the  
28 provisions of this Article does not automatically file criminal charges against the  
29 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 a party, any children, or  
4 any person alleged to be incompetent, which relief may include but is not limited to:

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

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

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

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

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

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

26 (c) After ~~an independent medical~~ a medical or mental health evaluation has  
27 been completed and a report issued, the court may order counseling or other medical  
28 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 which directs the  
27 defendant to refrain from abusing, harassing, or interfering with the person as  
28 provided in Article 1569(A)(1), the court may grant the order to be effective for an  
29 indefinite period of time as provided by the provisions of this Subparagraph on its

1 own motion or by motion of the petitioner. The indefinite period shall be limited to  
2 the portion of the protective order which directs the defendant to refrain from  
3 abusing, harassing, 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 he is prohibited  
25 from possessing a firearm pursuant to the provisions of 18 U.S.C. 922(g)(8) and this  
26 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~~ domestic abuse has occurred and the abusing  
4 party is in violation of a temporary restraining order or a protective order issued  
5 pursuant to this Chapter, the officer shall immediately arrest the abusing party.

6 B. If a law enforcement officer has reason to believe that domestic abuse has  
7 occurred, and the abusing party is not in violation of a restraining order or a  
8 protective order, the officer shall immediately use all reasonable means to prevent  
9 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 which 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;<sub>2</sub> or arranging for, ~~or~~ providing<sub>2</sub> 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~~ abuse 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 for in this  
28 Article shall apply.

1 Section 3. Children's Code Articles 1566(C) and 1571 are hereby repealed in their  
2 entirety.

3 Section 4. Sections 1 and 2 of this Act are intended to achieve the same purpose but  
4 are drafted differently. Section 1 amends provisions of law as they exist presently. Section  
5 2 amends provisions of law as they will exist if House Bill No. \_\_\_\_ of this 2020 Regular  
6 Session of the Legislature is enacted. Only one of the two Sections of this Act shall be given  
7 effect as follows:

8 (A) If House Bill No. \_\_\_\_ of this 2020 Regular Session of the Legislature is  
9 enacted, the provisions of Section 2 of this Act shall become effective, and the provisions  
10 of Section 1 of this Act shall not become effective.

11 (B) If House Bill No. \_\_\_\_ of this 2020 Regular Session of the Legislature is not  
12 enacted, the provisions of Section 1 of this Act shall become effective, and the provisions  
13 of Section 2 of this Act shall not become effective.

14 Section 5. In the event of a conflict between any provisions of Sections 2 and 3 of  
15 this Act and the Act that originated as House Bill No. \_\_\_\_ of this 2020 Regular Session of  
16 the Legislature, the provisions of Sections 2 and 3 of this Act shall supersede and control.

17 Section 6. Subject to the limitations provided by Section 4 of this Act, this Act shall  
18 become effective on August 1, 2020.

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#### 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)]

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HB 544 Original

2020 Regular Session

White

**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)(4), 1568, 1569, 1570, and 1573; Adds Ch.C. Art. 1570.2; Repeals Ch.C. Arts. 1566(C) and 1571)