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December 22, 2025

Representative Phillip R. DeVillier
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

RE: HOUSE RESOLUTION NO. 243 OF THE 2024 REGULAR SESSION

Dear Mr. Speaker:

The Louisiana State Law Institute respectfully submits its report to the legislature relative to mandatory holds for abusers.

Sincerely,

A handwritten signature in blue ink, appearing to read "Guy Holdridge".

Guy Holdridge
Director

GH/pc

Enclosure

cc: Representative John Wyble

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.gov

Secretary of State, Ms. Nancy Landry
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
CODE OF CRIMINAL PROCEDURE COMMITTEE**

**REPORT TO THE LEGISLATURE IN RESPONSE TO
HR NO. 243 OF THE 2024 REGULAR SESSION**

Relative to mandatory holds for offenders who abuse minors

Prepared for the
Louisiana Legislature on

December 22, 2025

Baton Rouge, Louisiana

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* * * * *

Marilyn Castle, Reporter
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2024 Regular Session

HOUSE RESOLUTION NO. 243

BY REPRESENTATIVE WYBLE

A RESOLUTION

To authorize and direct the Louisiana State Law Institute to conduct a study of the applicable provisions relative to physical or sexual abuse of a minor and the feasibility of the pretrial detention of these offenders for a minimum of seventy-two hours.

WHEREAS, a core tenant of both the United States and Louisiana criminal justice systems is that an individual is presumed innocent until proven guilty; and

WHEREAS, the United States Supreme Court held in *United States v. Salerno*, 481 U.S. 739, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987) that "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception. We hold that the provisions for pretrial detention in the Bail Reform Act of 1984 fall within that carefully limited exception. The Act authorizes the detention prior to trial of arrestees charged with serious felonies who are found after an adversary hearing to pose a threat to the safety of individuals or to the community which no condition of release can dispel. The numerous procedural safeguards detailed above must attend this adversary hearing. We are unwilling to say that this congressional determination, based as it is upon that primary concern of every government—a concern for the safety and indeed the lives of its citizens—on its face violates either the Due Process Clause of the Fifth Amendment or the Excessive Bail Clause of the Eighth Amendment"; and

WHEREAS, pursuant to Chapter 3-B of Title 15 of the Louisiana Revised Statutes of 1950, a person who commits a sex offense against a minor is required to register as a sex offender; and

WHEREAS, beginning on July 1, 2024, and pursuant to Chapter 3-G of Title 15 of the Louisiana Revised Statutes of 1950, a person who commits certain offenses against a minor may have to register as a child abuser; and

WHEREAS, the state of Louisiana has a sufficiently compelling governmental interest in providing a determinate amount of time for the pretrial detention of individuals accused of physically or sexually abusing a minor while both protecting the victim and the constitutional rights of the accused.

THEREFORE, BE IT RESOLVED that the House of Representatives of the Legislature of Louisiana does hereby authorize and direct the Louisiana State Law Institute to conduct a study of the applicable provisions relative to physical or sexual abuse of a minor and the feasibility of the pretrial detention of these offenders for a minimum of seventy-two hours.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall submit one print copy and one electronic copy of any report produced pursuant to this Resolution to the David R. Poynter Legislative Research Library as required by R.S. 24:772.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

December 22, 2025

To: Representative Phillip R. DeVillier
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

**REPORT TO THE LEGISLATURE IN RESPONSE TO
HOUSE RESOLUTION NO. 243 OF THE 2024 REGULAR SESSION**

House Resolution No. 243 of the 2024 Regular Session authorized and directed the Louisiana State Law Institute to study “the applicable provisions relative to physical or sexual abuse of a minor and the feasibility of the pretrial detention of these offenders for a minimum of seventy-two hours.” In fulfillment of this request, the Law Institute assigned this project to its Criminal Code and Code of Criminal Procedure Committee, which operates under the direction of retired Judge Marilyn Castle as Reporter.

Generally, sex offenses are defined in R.S. 15:541. *See also* Code of Criminal Procedure Articles 312(G)(2)(b)(ii) and 313(C)(5). “Sexual assault” is also defined in R.S. 46:2184. Physical abuse is not specifically defined in the Criminal Code and could encompass everything from simple battery (a misdemeanor) to attempted murder.

The resolution seeks to determine the feasibility of a minimum seventy-two-hour pretrial detention and, therefore, implicates the issue of bail. After any accused offender is taken into custody and booked into jail, there must be a determination of probable cause for the arrest. That determination must be made by a magistrate within forty-eight hours of arrest. *See* Code of Criminal Procedure Article 230.2.

Code of Criminal Procedure Article 312 provides that a person in custody who is charged with an offense is entitled to bail before conviction. There is no specific timeline for the setting of bail, but a magistrate or judge may set the amount of bail and any conditions at any time. *See* Code of Criminal Procedure Articles 314 and 320. There are some restrictions on the setting of bail involving specific crimes as will be discussed below.

With respect to arrestees, current law requires that an accused be brought before a judge for appointment of counsel within seventy-two hours of arrest. *See* Code of Criminal Procedure Article 230.1. At the seventy-two-hour hearing, a court “may also, in its discretion, determine or review a prior determination of the amount of bail.” Therefore, the determination regarding bail is contemplated to be made at least at the time of the seventy-two-hour hearing.

There are statutes dealing with special circumstances regarding the setting of bail. Code of Criminal Procedure Article 313 (“Gwen’s Law”) contains provisions dealing primarily with domestic abuse. In cases where the victim is a family member or household member of the accused,

or where the victim is the accused's dating partner, Article 313(A)(2) provides that a contradictory hearing *may* be held before bail is set when the offense involves "domestic abuse battery, violation of protective orders, stalking, or any felony offense involving the use or threatened use of force or a deadly weapon." The requirement for such a hearing is generally within the discretion of the judge or magistrate charged with setting bail. If a hearing is ordered, the hearing must be set within five days of the determination of probable cause and may be prompted either by the court, which is the usual case, or by the request of the prosecuting attorney. *See* Code of Criminal Procedure Article 313(A)(2).

Code of Criminal Procedure Article 313(B) provides a separate vehicle for instituting a contradictory bail hearing, on motion of the prosecuting authority in the case of a person charged with any offense. If requested by the prosecuting authority, the accused offender may be temporarily detained pending the hearing, and the hearing must occur within five days. In practice, because a judge or magistrate may set bail for an accused offender before the prosecuting authority is notified of the arrest, the accused offender may post bail and be released before the prosecuting authority has an opportunity to request a contradictory bail hearing.

Code of Criminal Procedure Article 313(C) provides that a person who is charged with a sex offense *and has already been convicted of a sex offense* **must** be subject to a contradictory hearing prior to setting of bail. The hearing must also be within five days of "receiving notice of the prior conviction." A problem arises if the judge or magistrate sets bail before a background check is made and the court is unaware of the prior conviction.

Code of Criminal Procedure Article 313(D) addresses capital cases. Generally, an accused offender charged with a capital crime shall not be admitted to bail "if the proof is evident and the presumption great that he is guilty of the capital offense."

In addition to Code of Criminal Procedure Article 313, Code of Criminal Procedure Article 320 contains certain mandatory conditions that must be considered in setting bail.

A number of offenses against a person, including sexual assault (which includes those offenses defined as sex offenses in R.S. 15:541(24)), are encompassed within Code of Criminal Procedure Article 320(G). This provision provides that in determining conditions of release on bond, the court shall consider a defendant's criminal history and whether the defendant poses a danger to the victim. If the court finds that the defendant poses a danger to the victim (unless the victim consents to the contact), the court must impose bail restrictions in the form of a Uniform Abuse Prevention Order prohibiting the accused offender from contacting the victim, going to their school or residence, contacting immediate family members, etc. This is a discretionary protective order that depends upon the court's finding of danger to the victim from the accused.

Code of Criminal Procedure Article 320(J) concerns those arrested for crimes of violence. It is mandatory and requires the judge to order the arrestee to refrain from contacting the victim of a crime of violence. **It requires the issuance of a Uniform Abuse Prevention Order.** *See* Code of Criminal Procedure Article 320(J)(3). In all cases, the court shall issue an order and file it into the record, serve the defendant personally with the order, and comply with the completion and filing of a Uniform Abuse Prevention Order. While sexual assault is included in the offenses

covered by the discretionary order provided for in Article 320(G) referenced above, those sexual assault crimes should also fall within the mandatory order provisions of Article 320(J) as crimes of violence.

Further, a defendant charged with violating R.S. 14:42 (first degree rape) must have a GPS monitor as a condition of the bail undertaking and may be ordered to have a GPS monitor for other sex offenses or crimes of violence.

Although some offenses will fall into the category of crimes for which a “Gwen’s Law” hearing may be set pursuant to Code of Criminal Procedure Article 313(A)(2), there are some offenses that do not fall within the coverage of Gwen’s Law. In those cases, it is possible, as noted above, for any accused to be temporarily detained pending a contradictory bail hearing if the prosecuting attorney is informed of the arrest and requests a contradictory hearing prior to bail being set.

It should be noted that neither Code of Criminal Procedure Article 313(A)(2) nor Code of Criminal Procedure Article 313(B) requires *mandatory* temporary detention of those accused offenders until a contradictory bail hearing has been set. The only *mandatory* detention provisions are those in Article 313(C) and (D) concerning recidivist sex offenders and those charged with capital offenses.

In light of the resolution’s directive, the following issues should be considered by the Legislature:

- 1) There is already a provision for a mandatory hold in cases of an accused arrested for a sex offense and previously convicted of a sex offense (Code of Criminal Procedure Article 313(C)). That provision defines “sex offense” as an offense as set forth in R.S. 15:541 when the victim is ***under the age of thirteen***. The resolution speaks to “physical or sexual abuse of a minor”. If this issue is addressed in new legislation, is the intent to cover any victim under the age of eighteen or to be consistent with the definition of under the age of thirteen as in present law?
- 2) There is no mandatory requirement for a contradictory bail hearing other than as noted in Item (1) above and in capital cases. If a contradictory bail hearing is intended to be mandatory in cases involving physical or sexual abuse of a minor, the crimes to be covered should be clearly defined. For example, the provision could be limited to crimes of violence as defined by R.S. 14:2, which includes all serious sexual offenses.
- 3) An alternative to a mandated contradictory hearing could be a mandate that in cases involving physical or sexual abuse of a minor, the prosecuting authority be advised of the arrest within twenty-four hours and afforded an opportunity to request, within seventy-two hours of arrest, that a contradictory bail hearing be conducted prior to the setting of bail. This would, in essence, result in a seventy-two-hour hold for anyone charged with a crime of violence where the victim is a minor. If this approach is taken, it is recommended that the crimes of violence to which the provision would be applicable be restricted to those in

which the minor is the direct victim rather than situations in which the minor is merely present when the crime is committed.

- 4) If the concern is the arrestee's contact with the victim, Code of Criminal Procedure Article 320(J) and (H) already require a judge to issue a stay away order and Uniform Abuse Prevention Order for the victim of any crime of violence as a condition of bond. As noted above, all serious sexual offenses are included within the definition of crimes of violence found in R.S. 14:2. The importance of a Uniform Abuse Prevention Order is that it is placed in a registry and available to law enforcement via computer inquiry, resulting in the ability to make an immediate arrest for a violation. If a mere stay away order is issued without placement in the registry, the victim may have no paperwork to prove its existence. Unless the victim is able to obtain court minutes or a copy of a judge's bail order, there is no proof if a violation occurs and nothing to present to law enforcement. That is why it is crucial that Article 320(J)(3) be followed in all cases, especially involving minors.

The pertinent language of Code of Criminal Procedure Article 320 is as follows:

J.(1) Crimes of violence. Notwithstanding the provisions of Paragraph G of this Article and notwithstanding any other provision of law to the contrary, if the defendant is alleged to have committed a crime of violence as defined in R.S. 14:2(B), the court shall require as a condition of bail that the defendant refrain from going to the residence or household of the victim, the victim's school, and the victim's place of employment or otherwise contacting the victim in any manner whatsoever, and shall refrain from having any further contact with the victim. The court shall also require as a condition of bail that the defendant be prohibited from communicating, by electronic communication, in writing, or orally, with a victim of the offense, or with any of the victim's immediate family members. This condition does not apply if the victim consents by making a request to the court and the court issues an order permitting the communication. If an immediate family member of the victim consents by way of a request to the court and the court issues an order permitting the communication, then the defendant may contact that person.¹

(2) Notwithstanding the provisions of Paragraph G of this Article and notwithstanding any other provision of law to the contrary, if a defendant alleged to have committed an offense included in Subparagraph (1) of this Paragraph is denied bail or is unable to post bail and is therefore incarcerated prior to trial, the court shall nevertheless issue an order under this Paragraph prohibiting the defendant from communicating, by electronic communication, in writing, or orally, with a victim of the offense, or with any of the victim's immediate family members. This condition shall not apply if the victim consents by way of a request to the court and the court issues an order permitting the communication.

¹ It should be noted the federal Fifth Circuit Court of Appeals has held that general intent crimes cannot be classified as crimes of violence for purposes of sentence enhancement in federal cases. This case involved Louisiana's domestic abuse battery statutes. However, this should not affect Louisiana's authority to classify general intent crimes, including domestic abuse battery, as crimes of violence. *U.S. v Abercrombie*, 2025 WL 2336106 No. 24-30483 (5th Cir. 2025).

If an immediate family member of the victim consents by way of a request to the court and the court issues an order permitting the communication, then the defendant may contact that person.

(3) In all cases, the court shall issue and shall file into the record any order issued pursuant to this Paragraph and shall serve the defendant with the order by personal service. The court shall also comply with the provisions of Paragraph H of this Article.

Paragraph H requires that the judge “shall cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall sign such order, and shall immediately forward it to the clerk of court for filing, on the next business day after the order is issued.”

The Committee notes that in practice, Uniform Abuse Prevention Orders are not routinely being issued in all cases involving crimes of violence. This may be due to the lack of awareness of the extent of this provision, lack of information required to be included in the orders, or lack of resources available to prepare the orders during bond setting hearings. While the statute requires the judge to “cause” to have the order prepared, there is no uniform method of achieving the goal. In many jurisdictions, the District Attorney’s office prepares the paperwork for a Uniform Abuse Prevention Order, especially in cases involving domestic abuse. This seems appropriate since some of the information needed to prepare the order relates to the identity and location of the victim. These issues may be appropriate for further study and recommendations as noted in Item (6) below. As to immediate recommendations regarding bond in a case where a defendant is alleged to have committed a crime of violence against a victim who is a minor, the statute could provide that a defendant shall not be released on bond until the Uniform Abuse Protection Order is in place or a hearing is held and evidence is produced to establish that a Uniform Abuse Protection Order is not necessary.

- 5) Although not a direct part of this resolution, the Committee references current law requiring a mandatory hold in cases of an accused arrested for a sex offense and previously convicted of a sex offense (Code of Criminal Procedure Article 313(C)). It was noted that there is a problem if the judge or magistrate sets bail before a background check is made and the court is unaware of the prior conviction. This might be addressed by a prohibition against setting bond for anyone arrested for a sex offense and previously convicted of a sex offense until the judge or magistrate has been provided criminal history record information as defined in R.S. 15:541(10) and requiring that this information be provided promptly. In this age of electronic transmission, all arresting agencies should have access to the National Crime Information System (NCIS) or other criminal justice information agency records.
- 6) The Committee also notes that there are numerous provisions spread throughout Titles 14 and 15 that deal with sex offense and other crimes as they relate to bail and pretrial detention. It is important that any judge, magistrate, district attorney, or defense counsel be fully aware of these provisions so as to avoid any unintentional failure to follow the mandates of law. The Law Institute has been in contact with the Louisiana Judicial College regarding the

construction of a practice guide for judges in this area. The Judicial College has indicated a willingness to undertake such a project, which may improve compliance with the existing bond restrictions.

The Louisiana State Law Institute respectfully submits the considerations contained in this report to the Legislature for its deliberation.