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THREE IMPORTANT DV-RELATED ISSUES:

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I. La. R.S. 46§2140. Law enforcement officers; duties

A. If a law enforcement officer has reason to believe that a family or household member or dating partner has been abused and the abusing party is in violation of a temporary restraining order, a preliminary or permanent injunction, or a protective order issued pursuant to [Lists 13 source provisions of orders of protection], the officer shall immediately arrest the abusing party.

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

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

(2) Arresting the abusive party in case of any misdemeanor crime which endangers the physical safety of the abused person whether or not the offense occurred in the presence of the officer. If there is no cause to believe there is impending danger, arresting the abusive party is at the officer's discretion.

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

(4) Notifying the abused person of his right to initiate criminal or civil proceedings; the availability of the protective order, R.S. 46:2136; and the availability of community assistance for domestic violence victims.

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

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

(a) Evidence from complainants and other witnesses.

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

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

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

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

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

(g) The existence of a temporary restraining order, a preliminary or permanent injunction, or a protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 30, 327.1, 335.1, 335.2, and 871.1. The officer shall presume that the predominant aggressor is the person against whom the order was issued.

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

(b) If the officer determines that one person was the predominant aggressor in a misdemeanor offense, the officer shall arrest the predominant aggressor if there is reason to believe that there is impending danger or if the predominant aggressor is in violation of a temporary restraining order, a preliminary or permanent injunction, or a protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 30, 327.1, 335.1, 335.2, and 871.1. If there is no threat of impending danger or no violation of a temporary restraining order, a preliminary or permanent injunction, or a protective order, the officer may arrest the predominant aggressor at the officer's discretion, whether or not the offense occurred in the presence of the officer.

An arrest pursuant to the provisions of this Subparagraph shall be subject to the laws governing arrest, including the need for probable cause as otherwise provided by law. The exceptions provided for in this Section shall apply.

(4) As used in this Subsection:

(a) "Dating violence" has the meaning as defined in R.S. 46:2151(C).

(b) "Domestic abuse" has the meaning as defined in R.S. 46:2132(3).

II. La. R.S. 14§79. Violation of protective orders

A.(1)(a) Violation of protective orders is the willful disobedience of a preliminary or permanent injunction or protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., R.S. 46:2181 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 320 and 871.1 after a contradictory court hearing, or the willful disobedience of a temporary restraining order or any ex parte protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., criminal stay-away orders as provided for in Code of Criminal Procedure Article 320, Children's Code Article 1564 et seq., or Code of Civil Procedure Articles 3604 and 3607.1, if the defendant has been given notice of the temporary restraining order or ex parte protective order by service of process as required by law.

(b) A defendant may also be deemed to have been properly served if tendered a certified copy of a temporary restraining order or ex parte protective order, or if tendered a faxed or electronic copy of a temporary restraining order or ex parte protective order received directly from the issuing magistrate, commissioner, hearing officer, judge or court, by any law enforcement officer who has been called to any scene where the named defendant is present. Such service of a previously issued temporary restraining order or ex parte protective order if noted in the police report shall be deemed sufficient evidence of service of process and admissible in any civil or criminal proceedings.

A law enforcement officer making service under this Subsection shall transmit proof of service to the judicial administrator's office, Louisiana Supreme Court, for entry into the Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after making service, exclusive of weekends and holidays. This proof shall include, at a minimum, the case caption, docket number, type of order, serving agency and officer, and the date and time service was made.

(2) Violation of protective orders shall also include the willful disobedience of an order of protection issued by a foreign state.

(3) Violation of protective orders shall also include the willful disobedience of the following:

(a) An order issued by any state, federal, parish, city, or municipal court judge, magistrate judge, commissioner or justice of the peace that a criminal defendant stay away from a specific person or persons as a condition of that defendant's release on bond.

(b) An order issued by any state, federal, parish, city, or municipal court judge, magistrate judge, commissioner or justice of the peace that a defendant convicted of a violation of any state, federal, parish, municipal, or city criminal offense stay away from any specific person as a condition of that defendant's release on probation.

(c) A condition of a parole release which requires that the parolee stay away from any specific person.

(d) An order issued pursuant to R.S. 46:1846.

(4) Violation of protective orders shall also include the possession of a firearm or carrying a concealed weapon in violation of R.S. 46:2136.3, the purchase or attempted purchase of a firearm, and the carrying of a concealed weapon in violation of R.S. 14:95.1, 95.1.3, or 95.10.

B.(1) On a first conviction for violation of protective orders which does not involve a battery or any crime of violence as defined by R.S. 14:2(B) against the person protected by the protective order, the offender shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

(2) On a second or subsequent conviction for violation of protective orders which does not involve a battery or any crime of violence as defined by R.S. 14:2(B) against the person protected by the protective order, regardless of whether the current offense occurred before or after the earlier convictions, the offender shall be fined not more than \$1,000 and imprisoned with or without hard labor for not less than 14 days nor more than two years.

At least fourteen days of the sentence of imprisonment imposed under this Paragraph shall be without benefit of probation, parole, or suspension of sentence.

If a portion of the sentence is imposed with benefit of probation, parole, or suspension of sentence, the court shall require the offender to participate in a court-monitored domestic abuse intervention program as defined by R.S. 14:35.3.

C.(1) Whoever is convicted of the offense of violation of protective orders where the violation involves a battery or any crime of violence as defined by R.S. 14:2(B) against the person for whose benefit the protective order is in effect, shall be fined not more than one thousand dollars and imprisoned with or without hard labor for not less than three months nor more than two years.

At least thirty days of the sentence of imprisonment imposed under this Paragraph shall be without benefit of probation, parole, or suspension of sentence.

If a portion of the sentence is imposed with benefit of probation, parole, or suspension of sentence, the court shall require the offender to participate in a court-monitored domestic abuse intervention program as defined by R.S. 14:35.3.

(2) Whoever is convicted of the offense of violation of protective orders where the violation involves a battery or any crime of violence as defined by R.S. 14:2(B) against the person for whose benefit the

protective order is in effect, and who has a conviction of violating a protective order or of an assault or battery upon the person for whose benefit the protective order is in effect during the five-year period prior to commission of the instant offense, regardless of whether the instant offense occurred before or after the earlier convictions, the offender shall be fined not more than \$2,000 & imprisoned with or without hard labor for not less than 01 year nor more than 05 years. At least one year of the sentence of imprisonment imposed under this Paragraph shall be without benefit of probation, parole, or suspension of sentence.

D. If, as part of any sentence imposed under this Section, a fine is imposed, the court may direct that the fine be paid for the support of the spouse or children of the offender.

E.(1) Law enforcement officers shall use every reasonable means, including but not limited to immediate arrest of the violator, to enforce a preliminary or permanent injunction or protective order obtained pursuant to [*Lists 25 source provisions for protection mechanisms*] if the defendant has been given notice of the temporary restraining order or ex parte protective order by service of process as required by law.

(2) Law enforcement officers shall at a minimum issue a summons to the person in violation of a temporary restraining order, a preliminary or permanent injunction, or a protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2181 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 30, 327.1, 335.2, and 871.1.

F. This Section shall not be construed to bar or limit the effect of any other criminal statute or civil remedy.

G. "Instant offense" as used in this Section means the offense which is before the court.

H. An offender ordered to participate in a court-monitored domestic abuse intervention program under the provision of this Section shall pay the cost incurred in participating in the program, unless the court determines that the offender is unable to pay. Failure to make payment under this Subsection shall subject the offender to revocation of probation.

III. Civil Warrants relative to Holiday Visitation Disputes – November 2019

A. Scenario

Momma and Daddy are divorced.

Momma has sole custody of the only child, Junior.

Daddy has visitation rights.

It's Christmas Eve, and, according to the divorce judgment, Daddy should have returned Junior to Momma not later than 20 December.

Everyone lives in your city.

Momma shows up at your office, tells you of the tardiness of her ex, advises that he does this all the time, and demands that you go and pick up Junior and return him to her, especially since Momma's Momma is in town from Kansas City, and wants to see Junior.

Can you go get the kid? What can/should you do?

Without the issuance of a Civil Warrant, here's about all you can do:

- Go to the scene.
- Ask to be allowed inside. If refused, stay on the porch.
- Try to reason with Daddy.
- Make sure the child is safe.
- Keep the Peace.
- Write a detailed report.

- Advise Daddy that he is going to probably get in trouble for disobeying a court order, therefore being held in contempt of court.
- Unless the child is in danger, the only way you can physically go into Daddy's home and get the child is with a CIVIL WARRANT, La. R.S. 9:343.

B. Text

La. R.S. 9:343. Return of child kept in violation of custody and visitation order

A. Upon presentation of a certified copy of a custody and visitation rights order rendered by a court of this state, together with the sworn affidavit of the custodial parent, the judge, who shall have jurisdiction for the limited purpose of effectuating the remedy provided by this Section by virtue of either the presence of the child or litigation pending before the court, may issue a civil warrant directed to law enforcement authorities to return the child to the custodial parent pending further order of the court having jurisdiction over the matter.

B. The sworn affidavit of the custodial parent shall include all of the following:

- (1) A statement that the custody and visitation rights order is true and correct.
- (2) A summary of the status of any pending custody proceeding.
- (3) The fact of the removal of or failure to return the child in violation of the custody and visitation rights order.
- (4) A declaration that the custodial parent desires the child returned.

The actual Civil Warrant will read something like this:

CIVIL WARRANT

To the Webster Parish Sheriff, or any Louisiana Law Officer:

Considering the documentary submissions as per La. R. S. 9:343,

YOU ARE HEREBY authorized and empowered to locate the minor child, Frederick Hayes Smith, Junior (DOB: 2.16.2017), wherever he may be found within the State of Louisiana.

When the child is located, a Louisiana Law Enforcement Officer, with jurisdiction in the governmental subdivision where the child is found, shall physically pick up the child and return him to his mother, Mary Jones Smith (DOB: 5.13.1990), 17 Green Street, Springhill, LA 71075.

This warrant is signed at Minden, Webster Parish, Louisiana, on this

11th day of November 2019.

Joseph Jones, District Judge, 26th JDC