
HOUSE COMMITTEE AMENDMENTS

2015 Regular Session

Amendments proposed by House Committee on Administration of Criminal Justice to
Original House Bill No. 488 by Representative Moreno

1 AMENDMENT NO. 1

2 On page 1, line 3, after "and (B)," and before "79(B)," change "40.2(A) and (B)(1)(a)," to
3 "40.2, and"

4 AMENDMENT NO. 2

5 On page 1, at the beginning of line 4, delete "and 95.10(A), (C), and (E),"

6 AMENDMENT NO. 3

7 On page 1, line 16, after "threats; to" and before "penalties" delete "amend the" and insert
8 "provide specific, additional"

9 AMENDMENT NO. 4

10 On page 1, line 17, after "stalking" and before the semicolon ";" insert "against a family
11 member, household member, or dating partner"

12 AMENDMENT NO. 5

13 On page 1, line 19, after "orders;" delete the remainder of the line and insert the following:

14 "to provide relative to the prohibition on possession of firearms by certain
15 persons convicted of stalking;"

16 AMENDMENT NO. 6

17 On page 1, at the beginning of line 20, delete "firearm;"

18 AMENDMENT NO. 7

19 On page 2, line 8, after "and (B)," and before "79(B)," change "40.2(A) and (B)(1)(a)," to
20 "40.2,"

21 AMENDMENT NO. 8

22 On page 5, delete lines 24 through 29 in their entirety and on page 6, delete lines 1 through
23 13 in their entirety and insert the following:

24 "§40.2. Stalking

25 A. Stalking is the intentional and repeated following or harassing of
26 another person that would cause a reasonable person to feel alarmed or to
27 suffer emotional distress. Stalking shall include but not be limited to the
28 intentional and repeated uninvited presence of the perpetrator at another
29 person's home, workplace, school, or any place which would cause a
30 reasonable person to be alarmed, or to suffer emotional distress as a result of
31 verbal, written, or behaviorally implied threats of death, bodily injury, sexual
32 assault, kidnaping, or any other statutory criminal act to ~~himself~~ the victim
33 or any member of ~~his~~ the victim's family or any person with whom ~~he~~ the
34 victim is acquainted.

1 B.(1)(a) Notwithstanding any law to the contrary and except as
2 provided in Subparagraph (c) of this Paragraph, on first conviction, whoever
3 commits the crime of stalking shall be fined not less than five hundred
4 dollars nor more than one thousand dollars and shall be imprisoned for not
5 less than thirty days nor more than one year. Notwithstanding any other
6 sentencing provisions, any person convicted of stalking shall undergo a
7 psychiatric evaluation. Imposition of the sentence shall not be suspended
8 unless the offender is placed on probation and participates in a court-
9 approved counseling which could include but shall not be limited to anger
10 management, abusive behavior intervention groups, or any other type of
11 counseling deemed appropriate by the courts.

12 (b) Whoever commits the crime of stalking against a victim under the
13 age of eighteen when the provisions of Paragraph (6) of this Subsection are
14 not applicable shall be imprisoned for not more than three years, with or
15 without hard labor, and fined not more than two thousand dollars, or both.

16 (c) Notwithstanding any provision of law to the contrary, on a
17 conviction of a first offense when the victim of the stalking offense is a
18 family member, household member, or dating partner of the defendant, the
19 defendant shall be imprisoned with or without hard labor for up to five years
20 and shall be fined not more than five thousand dollars. At least forty-eight
21 hours of the sentence shall be imposed without benefit of parole, probation,
22 or suspension of sentence. Imposition or execution of the remainder of the
23 sentence shall not be suspended unless the defendant is required to
24 participate in a court-monitored domestic abuse intervention program as
25 defined by R.S. 14:35.3. When a person is sentenced pursuant to the
26 provisions of this Subparagraph, the provisions of Subsection C of this
27 Section shall also apply.

28 (2)(a) Any person who commits the offense of stalking and who is
29 found by the trier of fact, whether the jury at a jury trial, the judge in a bench
30 trial, or the judge at a sentencing hearing following a jury trial, beyond a
31 reasonable doubt to have placed the victim of the stalking in fear of death or
32 bodily injury by the actual use of or the defendant's having in his possession
33 during the instances which make up the crime of stalking a dangerous
34 weapon or is found beyond a reasonable doubt to have placed the victim in
35 reasonable fear of death or bodily injury, shall be imprisoned for not less than
36 one year nor more than five years, with or without hard labor, without benefit
37 of probation, parole, or suspension of sentence and may be fined one
38 thousand dollars, or both. Whether or not the defendant's use of or his
39 possession of the dangerous weapon is a crime or, if a crime, whether or not
40 he is charged for that offense separately or in addition to the crime of
41 stalking shall have no bearing or relevance as to the enhanced sentence under
42 the provisions of this Paragraph.

43 (b) If the victim is under the age of eighteen, and when the
44 provisions of Paragraph (6) of this Subsection are not applicable, the offender
45 shall be imprisoned for not less than two years nor more than five years, with
46 or without hard labor, without benefit of probation, parole, or suspension of
47 sentence and may be fined not less than one thousand nor more than two
48 thousand dollars, or both.

49 (3) Any person who commits the offense of stalking against a person
50 for whose benefit a protective order, a temporary restraining order, or any
51 lawful order prohibiting contact with the victim issued by a judge or
52 magistrate is in effect in either a civil or criminal proceeding, protecting the
53 victim of the stalking from acts by the offender which otherwise constitute
54 the crime of stalking, shall be punished by imprisonment with or without
55 hard labor for not less than ninety days and not more than two years or fined
56 not more than five thousand dollars, or both.

57 (4) Upon a second conviction occurring within seven years of a prior
58 conviction for stalking, the offender shall be imprisoned with or without hard
59 labor for not less than five years nor more than twenty years, without benefit

1 of probation, parole, or suspension of sentence, and may be fined not more
2 than five thousand dollars, or both.

3 (5) Upon a third or subsequent conviction, the offender shall be
4 imprisoned with or without hard labor for not less than ten years and not more
5 than forty years and may be fined not more than five thousand dollars, or
6 both.

7 (6)(a) Any person thirteen years of age or older who commits the
8 crime of stalking against a child twelve years of age or younger and who is
9 found by the trier of fact, whether the jury at a jury trial, the judge in a bench
10 trial, or the judge at a sentencing hearing following a jury trial, beyond a
11 reasonable doubt to have placed the child in reasonable fear of death or
12 bodily injury, or in reasonable fear of the death or bodily injury of a family
13 member of the child shall be punished by imprisonment with or without hard
14 labor for not less than one year and not more than three years and fined not
15 less than fifteen hundred dollars and not more than five thousand dollars, or
16 both.

17 (b) Lack of knowledge of the child's age shall not be a defense.

18 C. Notwithstanding any provision of law to the contrary, when the
19 victim of the stalking offense is a family member, household member, or
20 dating partner of the defendant, the following provisions shall apply:

21 (1) In addition to any other penalty imposed, the court shall grant a
22 protective order which directs the defendant to refrain from abusing,
23 harassing, interfering with the victim or employment of the victim, or being
24 physically present within a certain distance of the victim. Upon issuance of
25 the protective order pursuant to the provisions of this Paragraph, the
26 provisions of Paragraphs (G)(2), (3), and (4) of this Subsection shall apply.

27 (2) For purposes of this Subsection and Subparagraph (B)(1)(c) of
28 this Section, the following words shall have the following meanings:

29 (a) "Dating partner" means any person who is or has been in a social
30 relationship of a romantic or intimate nature with the victim and where the
31 existence of such a relationship shall be determined based on a consideration
32 of the following factors:

33 (i) The length of the relationship.

34 (ii) The type of relationship.

35 (iii) The frequency of interaction between the persons involved in the
36 relationship.

37 (b) "Family member" means spouses, former spouses, parents,
38 children, stepparents, stepchildren, foster parents, and foster children.

39 (c) "Household member" means any person of the opposite sex
40 presently or formerly living in the same residence with the offender as a
41 spouse, whether married or not, or any child presently or formerly living in
42 the same residence with the offender, or any child of the offender regardless
43 of where the child resides.

44 C.D. For the purposes of this Section, the following words shall have
45 the following meanings:

46 (1) "Harassing" means the repeated pattern of verbal
47 communications or nonverbal behavior without invitation which includes but
48 is not limited to making telephone calls, transmitting electronic mail, sending
49 messages via a third party, or sending letters or pictures.

50 (2) "Pattern of conduct" means a series of acts over a period of time,
51 however short, evidencing an intent to inflict a continuity of emotional
52 distress upon the person. Constitutionally protected activity is not included
53 within the meaning of pattern of conduct.

54 (3) Repealed by Acts 1993, No. 125, §2.

55 D.E. As used in this Section, when the victim of the stalking is a
56 child twelve years old or younger:

57 (1) "Pattern of conduct" includes repeated acts of nonconsensual
58 contact involving the victim or a family member.

59 (2) "Family member" includes:

1 (a) A child, parent, grandparent, sibling, uncle, aunt, nephew, or
2 niece of the victim, whether related by blood, marriage, or adoption.

3 (b) A person who lives in the same household as the victim.

4 (3)(a) "Nonconsensual contact" means any contact with a child
5 twelve years old or younger that is initiated or continued without that child's
6 consent, that is beyond the scope of the consent provided by that child, or
7 that is in disregard of that child's expressed desire that the contact be avoided
8 or discontinued.

9 (b) "Nonconsensual contact" includes:

10 (i) Following or appearing within the sight of that child.

11 (ii) Approaching or confronting that child in a public place or on
12 private property.

13 (iii) Appearing at the residence of that child.

14 (iv) Entering onto or remaining on property occupied by that child.

15 (v) Contacting that child by telephone.

16 (vi) Sending mail or electronic communications to that child.

17 (vii) Placing an object on, or delivering an object to, property occupied by that child.

18 (c) "Nonconsensual contact" does not include any otherwise lawful
19 act by a parent, tutor, caretaker, mandatory reporter, or other person having
20 legal custody of the child as those terms are defined in the Louisiana
21 Children's Code.

22 (4) "Victim" means the child who is the target of the stalking.

23 E.F. Whenever it is deemed appropriate for the protection of the
24 victim, the court may send written notice to any employer of a person
25 convicted for a violation of the provisions of this Section describing the
26 conduct on which the conviction was based.

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

33 (2) Any protective order granted pursuant to the provisions of this
34 Subsection, or pursuant to the provisions of Subsection C of this Section,
35 shall be served on the defendant at the time of sentencing.

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

39 (b) If the court grants the protective order for an indefinite period of
40 time pursuant to Subparagraph (a) of this Paragraph, after a hearing, on the
41 motion of any party and for good cause shown, the court may modify the
42 indefinite effective period of the protective order to be effective for a fixed
43 term, not to exceed eighteen months, or to terminate the effectiveness of the
44 protective order. A motion to modify or terminate the effectiveness of the
45 protective order may be granted only after a good faith effort has been made
46 to provide reasonable notice of the hearing to the victim, the victim's
47 designated agent, or the victim's counsel, and either of the following occur:

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

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

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

56 (b) The clerk of the issuing court shall send a copy of the Uniform
57 Abuse Prevention Order or any modification thereof to the chief law
58 enforcement official of the parish where the victim resides. A copy of the
59 Uniform Abuse Prevention Order shall be retained on file in the office of the

1 chief law enforcement officer as provided in this Subparagraph until
 2 otherwise directed by the court.

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

9 ~~G.H.(1)~~ The provisions of this Section shall not apply to a private
 10 investigator licensed pursuant to the provisions of Chapter 56 of Title 37 of
 11 the Louisiana Revised Statutes of 1950, acting during the course and scope
 12 of his employment and performing his duties relative to the conducting of an
 13 investigation.

14 ~~H.(2)~~ The provisions of this Section shall not apply to an investigator
 15 employed by an authorized insurer regulated pursuant to the provisions of
 16 Title 22 of the Louisiana Revised Statutes of 1950, acting during the course
 17 and scope of his employment and performing his duties relative to the
 18 conducting of an insurance investigation.

19 ~~I.(3)~~ The provisions of this Section shall not apply to an investigator
 20 employed by an authorized self-insurance group or entity regulated pursuant
 21 to the provisions of Chapter 10 of Title 23 of the Louisiana Revised Statutes
 22 of 1950, acting during the course and scope of his employment and
 23 performing his duties relative to the conducting of an insurance investigation.

24 ~~J.I.~~ A conviction for stalking shall not be subject to expungement as
 25 provided for by R.S. 44:9."

26 AMENDMENT NO. 9

27 On page 9, delete lines 10 through 28 in their entirety and on page 10, delete lines 1 through
 28 8 in their entirety