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 DIGEST
 

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SB 36 Reengrossed

2015 Regular Session

Amedee

Present law (Protection from Family Violence Act) provides certain services, benefits, and other forms of assistance to victims of domestic abuse, dating violence, human trafficking, and stalking. These services, benefits, and assistance include but are not limited to: petition for a temporary restraining order or protective order, relief from paying certain court costs associated with obtaining these orders of protection, filing of the order of protection in the La. Protective Order Registry, prohibition of possession of firearms by certain persons subject to the order of protection, and assistance by the clerk of court and other advocates in making applications for the orders of protection.

Proposed law creates the Protection for Victims of Sexual Assault Act within the present law Protection from Family Violence Act and does all of the following:

- (1) Provides that victims of "sexual assault", defined by proposed law as any act of obscenity or any act constituting an offense for which a person is required to register as a sex offender, are eligible to receive all services, benefits, and other forms of assistance provided to victims of domestic abuse, dating violence, human trafficking, and stalking under the Protection from Family Violence Act.
- (2) Provides that a showing by a sexual assault victim that he or she is or has been a victim of sexual assault shall constitute good cause for purposes of obtaining a temporary restraining order in an ex parte proceeding.
- (3) Authorizes "sexual assault advocates", as defined by proposed law, to provide clerical assistance to sexual assault victims in making an application for a protective order.
- (4) Provides relative to the disclosure of privileged communications and records relating to privileged communications maintained by a sexual assault center, and defines "privileged communications" and "sexual assault center".

In determining the conditions of release for an offense committed against the defendant's family member, household member, or dating partner, or for the offenses of domestic abuse battery or stalking, present law (C.Cr.P. Art. 335.1) requires the court to order as a condition of bail that the defendant refrain from going near or contacting the victim if the court determines that the defendant poses a threat or danger to the victim.

Present law (C.Cr.P. Art. 327.1) provides that if an order issued against a defendant as part of a bail restriction for the purpose of preventing domestic abuse, stalking, or dating violence, the judge shall prepare a Uniform Abuse Prevention Order and the clerk of the issuing court shall transmit the order to the La. Protective Order Registry.

Proposed law expands present law (C.Cr.P. Articles 327.1 and 335.1) to apply to orders issued against a defendant as part of a bail restriction for the purpose of preventing sexual assault.

Present law (C.Cr.P. Art. 335.1) provides that if an order is issued against a defendant as part of a bail restriction for the purpose of preventing domestic abuse, stalking, or dating violence, the court shall order that the defendant be prevented from possessing a firearm for the duration of the order.

Proposed law retains present law and provides that if an order is issued against a defendant as part of a bail restriction for the purpose of preventing sexual assault, the court may order that the defendant be prevented from possessing a firearm for the duration of the order.

Present law (R.S. 14:79) provides that the crime of violation of protective orders includes the willful disobedience of an order issued pursuant to certain provisions of present law to require a defendant to stay away from a specific person or persons as a condition of his release on bond, probation, or parole. Further provides for the duties of law enforcement relative to the enforcement of this present law provision.

Proposed law expands present law to apply to violations of temporary restraining orders or protective orders issued pursuant to the proposed law Protection for Victims of Sexual Assault Act.

Present law authorizes a hearing officer to hear and make recommendations on all protective orders filed in accordance with the Protection from Family Violence Act (R.S. 46:2131 et seq. and R.S. 46:2151 et seq.) and other provisions of present law.

Proposed law expands the hearing officer's authority to hear and make recommendations on all protective orders filed in accordance with the present law Protection from Stalking Act (R.S. 46:2171 et seq.) and proposed law Protection for Victims of Sexual Assault Act (R.S. 46:2181 et seq.).

(Amends C.Cr.P. Art. 327.1 and 335.1(A)(1)(a) and (c), R.S. 14:79(A)(1)(a) and (E), R.S. 44:4.1(B)(31), and R.S. 46:236.5(C)(3)(k) and 2136.2(A) and (B); Adds R.S. 46:2181-2188)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary B to the original bill

1. Removes proposed law definition of "victim of sexual assault".
2. Limits jurisdiction for SAPO in proposed law to district courts.
3. Changes proposed law to allow, rather than require, the address and parish of petitioners for SAPO to remain confidential with the court.
4. Add minor children and persons alleged to be incompetent to individuals who may apply for SAPO.
5. Limits fees and costs that may be assessed by the court against the defendant to those incurred in maintaining or defending any proceeding concerning protecting victims of sexual assault.
6. Adds relocation expenses to the costs that may be assessed by the court against the defendant.
7. Adds provision regarding bail restrictions.

Senate Floor amendments to the engrossed bill

1. Requires that in the petition to be filed under proposed law that the address and parish of each petitioner and each person on whose behalf the petition is filed remain confidential with the court.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the reengrossed bill:

1. Amend proposed law to do the following:

- (a) Provide that the court may, as a condition of bail and as part of a criminal stay-away order, prohibit a person charged with a sexual assault offense from possessing a firearm.
  - (b) Retain present law to require the court, as a condition of bail and as part of a criminal stay-away order, to prohibit a person charged with domestic abuse battery, stalking, or any offense against the defendant's family member, household member, or dating partner, from possessing a firearm.
- 2. Delete provisions that specifically provide relative to petitions for temporary restraining orders and protective orders for victims of sexual assault and the penalties applied for violations of such orders.
  - 3. Provide that sexual assault victims, as defined by proposed law, are eligible to receive all services, benefits, and other forms of assistance available to victims under the Protection from Family Violence Act, which includes the Domestic Abuse Assistance Act, Protection from Dating Violence Act, and the Protection from Stalking Act, including the issuance of temporary restraining orders or protective orders.
  - 4. Provide that a showing by a sexual assault victim that he or she is or has been a victim of sexual assault shall constitute good cause for purposes of obtaining a temporary restraining order in an ex parte proceeding.
  - 5. Authorize a hearing officer to hear and make recommendations on all protective orders filed in accordance with the Protection from Stalking Act and the Protection for Victims of Sexual Assault Act.
  - 6. Make technical corrections.

The Committee Amendments Proposed by House Committee on House and Governmental Affairs to the reengrossed bill:

- 1. Add a reference to the proposed public records exemption in the Public Records Law and make conforming technical changes.