
HOUSE COMMITTEE AMENDMENTS

2018 Regular Session

Substitute for Original House Bill No. 81 by Representative Smith as proposed by the House Committee on Administration of Criminal Justice

This document reflects the content of a substitute bill but is not in a bill form; page numbers in this document DO NOT correspond to page numbers in the substitute bill itself.

To amend and reenact R.S. 14:34.9(I), (J), (K), and (L) and 35.3(G)(1), (I), (K), (L), and (M) and R.S. 46:1846(A), (C), and (E) and to enact R.S. 14:2(B)(48), (49), and (50), 34.9(M), 35.3(N), and 79(A)(3)(d) and R.S. 46:1846(F), relative to domestic abuse; to provide relative to the crimes of domestic abuse, battery of a dating partner, and violations of protective orders; to provide relative to the penalties for battery of a dating partner and domestic abuse battery when the acts involve burning, strangulation, or a pregnant victim, or are committed near a child who is thirteen years of age or younger; to provide that the crime of battery of a dating partner is a predicate offense for a second or subsequent offense of domestic abuse battery; to add certain violations of domestic abuse battery, battery of a dating partner, and violations of protective orders to the list of crimes of violence; to prohibit persons convicted of certain violations of domestic abuse battery and battery of a dating partner from communicating with the victim or the victim's family member; to provide for the issuance of a Uniform Abuse Prevention Order when certain persons are prohibited from communicating with the victim or the victim's family member; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:34.9(I), (J), (K), and (L) and 35.3(G)(1), (I), (K), (L), and (M) are hereby amended and reenacted and R.S. 14:2(B)(48), (49), and (50), 34.9(M), 35.3(N), and 79(A)(3)(d) are hereby enacted to read as follows:

§2. Definitions

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B. In this Code, "crime of violence" means an offense that has, as an element, the use, attempted use, or threatened use of physical force against the

person or property of another, and that, by its very nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense or an offense that involves the possession or use of a dangerous weapon. The following enumerated offenses and attempts to commit any of them are included as "crimes of violence":

(48) Domestic abuse battery punishable under R.S. 14:35.3(M)(2) or (N).

(49) Battery of a dating partner punishable under R.S. 14:34.9(L)(2) or (M).

(50) Violation of a protective order if the violation involves a battery or any crime of violence as defined by this Subsection against the person for whose benefit the protective order is in effect.

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§34.9. Battery of a dating partner

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I. This Subsection shall be cited as the "Dating Partner Abuse Child Endangerment Law". ~~When~~ Notwithstanding any provision of law to the contrary, when the state proves, in addition to the elements of the crime as set forth in Subsection A of this Section, that a minor child thirteen years of age or younger was present at the residence or any other scene at the time of the commission of the offense, ~~of the sentence imposed by the court, the execution of the minimum mandatory sentence provided by Subsection C or D of this Section, as appropriate, shall not be suspended, the minimum mandatory sentence imposed under Subsection E of this Section shall be two years without suspension of sentence, and the minimum mandatory sentence imposed under Subsection F of this Section shall be four years without suspension of sentence~~ the offender, in addition to any other penalties imposed pursuant to this Section, shall be imprisoned at hard labor for not more than three years.

J. ~~If~~ Notwithstanding any provision of law to the contrary, if the victim of the offense is pregnant and the offender knows that the victim is pregnant at the time of the commission of the offense, the offender, ~~who is sentenced under the provisions of this Section, shall be required to serve a minimum of forty-five days~~

~~without benefit of suspension of sentence for a first conviction, upon a second conviction shall serve a minimum of one year imprisonment without benefit of suspension of sentence, upon a third conviction shall serve a minimum of two years with or without hard labor without benefit of probation, parole, or suspension of sentence, and upon a fourth and subsequent offense shall serve a minimum of four years at hard labor without benefit of probation, parole, or suspension of sentence in addition to any other penalties imposed pursuant to this Section, shall be imprisoned at hard labor for not more than three years.~~

K. Notwithstanding any ~~other~~ provision of law to the contrary, if the offense involves strangulation, the offender, in addition to any other penalties imposed pursuant to this Section, shall be imprisoned at hard labor for not more than three years.

L.(1) Notwithstanding any ~~other~~ provision of law to the contrary, if the offense is committed by burning, the offender, in addition to any other penalties imposed pursuant to this Section, shall be imprisoned at hard labor for not more than three years. ~~that~~

(2) If the burning results in serious bodily injury, the offense shall be classified as a crime of violence, and the offender, in addition to any other penalties imposed pursuant to this Section, shall be imprisoned at hard labor for not less than five nor more than fifty years without benefit of probation, parole, or suspension of sentence.

M. Notwithstanding any provision of law to the contrary, if the offender intentionally inflicts serious bodily injury, the offender, in addition to any other penalties imposed pursuant to this Section, shall be imprisoned at hard labor for not more than eight years.

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§35.3. Domestic abuse battery

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G.(1) For purposes of determining whether an offender has a prior conviction for violation of this Section, a conviction under this Section, or a

conviction under the laws of any state or an ordinance of a municipality, town, or similar political subdivision of another state which prohibits the intentional use of force or violence committed by one household member, ~~or family member, or dating partner~~ upon another household member, ~~or family member, or dating partner~~ shall constitute a prior conviction.

* * *

I. This Subsection shall be cited as the "Domestic Abuse Child Endangerment Law". ~~When~~ Notwithstanding any provision of law to the contrary, when the state proves, in addition to the elements of the crime as set forth in Subsection A of this Section, that a minor child thirteen years of age or younger was present at the residence or any other scene at the time of the commission of the offense, ~~of the sentence imposed by the court, the execution of the minimum mandatory sentence provided by Subsection C or D of this Section, as appropriate, shall not be suspended, the minimum mandatory sentence imposed under Subsection E of this Section shall be two years without suspension of sentence, and the minimum mandatory sentence imposed under Subsection F of this Section shall be four years without suspension of sentence~~ the offender, in addition to any other penalties imposed pursuant to this Section, shall be imprisoned at hard labor for not more than three years.

* * *

K. If Notwithstanding any provision of law to the contrary, if the victim of domestic abuse battery is pregnant and the offender knows that the victim is pregnant at the time of the commission of the offense, the offender, ~~who is sentenced under the provisions of this Section, shall be required to serve a minimum of forty-five days without benefit of suspension of sentence for a first conviction, upon a second conviction shall serve a minimum of one year imprisonment without benefit of suspension of sentence, upon a third conviction shall serve a minimum of two years with or without hard labor without benefit of probation, parole, or suspension of sentence, and upon a fourth and subsequent offense shall serve a minimum of four years at hard labor without benefit of probation, parole, or suspension of sentence in~~ in

addition to any other penalties imposed pursuant to this Section, shall be imprisoned at hard labor for not more than three years.

L. Notwithstanding any ~~other~~ provision of law to the contrary, if the domestic abuse battery involves strangulation, the offender, in addition to any other penalties imposed pursuant to this Section, shall be imprisoned at hard labor for not more than three years.

M.(1) Notwithstanding any other provision of law to the contrary, if the domestic abuse battery is committed by burning, the offender, in addition to any other penalties imposed pursuant to this Section, shall be imprisoned at hard labor for not more than three years. ~~that~~

(2) If the burning results in serious bodily injury, the offense shall be classified as a crime of violence, and the offender, in addition to any other penalties imposed pursuant to this Section, shall be imprisoned at hard labor for not less than five nor more than fifty years without benefit of probation, parole, or suspension of sentence.

N. Notwithstanding any provision of law to the contrary, if the offender intentionally inflicts serious bodily injury, the offender, in addition to any other penalties imposed pursuant to this Section, shall be imprisoned at hard labor for not more than eight years.

* * *

§79. Violation of protective orders

A.

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

* * *

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

* * *

Section 2. R.S. 46:1846(A), (C), and (E) are hereby amended and reenacted and R.S. 46:1846(F) is hereby enacted to read as follows:

§1846. Communication between offender and victim prohibited; exceptions

A. A person who has been charged by bill of information or indictment with any crime of violence as defined in R.S. 14:2 or any offense, that is a felony, committed upon a family member, household member, or dating partner, as those terms are defined by R.S. 46:2132, or any immediate family member of such person, shall be prohibited from communicating, either by electronic communication, in writing, or orally, with a victim of the offense, or any of his immediate family members for which the person has been charged or for which disposition of the case is pending.

* * *

C. A person who has been sentenced for a crime of violence as defined in R.S. 14:2 or any offense, that is a felony, committed upon a family member, household member, or dating partner, as those terms are defined by R.S. 46:2132, or any immediate family member of such person, shall be prohibited from communicating, either by electronic communication, in writing, or orally, with a victim of the offense, or any of his immediate family members, for which the person has been sentenced unless the victim or his immediate family members initiate the communication through the Department of Public Safety and Corrections, and it is agreed that the victim and the offender participate in a formally defined restorative justice program administered through the department.

* * *

E.(1) When a person is prohibited from communicating with another person pursuant to the provisions of this Section, a judge shall cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), to protect, at a minimum, a victim and the children of the victim, 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 clerk of the issuing court shall transmit the Uniform Abuse Prevention Order 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 the order is filed with the clerk of court. The clerk of the issuing court shall also send a copy of the Uniform Abuse Prevention Order, or any modification thereof, to the chief law enforcement officer of the parish where the person or persons protected by the order reside. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer until otherwise directed by the court.

(2) If an order is issued pursuant to the provisions of this Section, it shall be presumed that the defendant poses a credible threat to the physical safety of the person or persons protected by the order, and the court shall order that the defendant be prohibited from possessing a firearm for the duration of the Uniform Abuse Prevention Order.

F. Whoever violates the provisions of this Section shall be ~~fined not more than five hundred dollars, imprisoned for not more than six months, or both~~ subject to the provisions of R.S. 14:79.

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)]

HB Draft

2018 Regular Session

Abstract: Provides relative to domestic abuse battery, battery of a dating partner, and Uniform Abuse Prevention Orders issued against persons charged with certain crimes to prohibit communication with the victim or the victim's family member.

Present law provides for specified penalties when the crime of battery of a dating partner (R.S. 14:34.9) or domestic abuse battery (R.S. 14:35.3) involves strangulation, burning, or a pregnant victim or is committed in the presence of a child who is 13 years of age or younger.

Present law provides that if the offense is committed by burning that results in serious bodily injury, the offense shall be classified as a crime of violence, and the offender shall be imprisoned at hard labor for not less than five nor more than 50 years without benefit of probation, parole, or suspension of sentence.

Proposed law amends present law to provide that when the crime of battery of a dating partner or domestic abuse battery involves strangulation or a pregnant victim, or is committed in the presence of a child who is 13 years of age or younger, the offender, in addition to any other penalties imposed, shall be imprisoned at hard labor for not more than three years.

With respect to offenses which result in serious bodily injury the victim, proposed law does all of the following:

- (1) Adds that if the offense results in serious bodily injury, by means other than burning, the offender, in addition to any other penalties imposed, shall be imprisoned at hard labor for not more than eight years.
- (2) Adds that if the offense results in serious bodily injury committed by burning, the offender, in addition any other penalties imposed, shall be imprisoned at hard labor for not less than five nor more than 50 years without benefit of parole, probation, or suspension of sentence.

Present law (R.S. 14:2) provides for a definition of "crime of violence" and provides for a list of forty-three enumerated present law offenses that are included as crimes of violence.

Proposed law retains present law and adds the following present law crimes to the list of enumerated crimes of violence:

- (1) Domestic abuse battery that results in serious bodily injury to the victim.
- (2) Battery of a dating partner that results in serious bodily injury to the victim.
- (3) Violation of protective orders if the violation involves a battery or any crime of violence against the person for whose benefit the protective order is in effect.

Present law provides increased penalties for second or subsequent convictions of the crime of domestic abuse battery, and further provides that for purposes of determining whether an offender has a prior conviction, a conviction of domestic abuse battery, or a conviction under the laws of any state or an ordinance of a municipality, town, or similar political subdivision of another state which prohibits the intentional use of force or violence committed by one household member or family member upon another household member or family member shall constitute a prior conviction.

Proposed law retains present law and adds that a conviction under the laws of any state or an ordinance of a municipality, town, or similar political subdivision of another state which prohibits the intentional use of force or violence committed by one dating partner upon another dating partner shall also constitute a prior conviction.

Present law (R.S. 46:1846) provides that any person who has been charged with or has been sentenced for any crime of violence, or any immediate family member of such person, shall be prohibited from communicating with a victim of the offense or any of the victim's immediate family members. Further provides that whoever violates this prohibition shall be fined not more than \$500, imprisoned for not more than six months, or both.

Proposed law expands the application of present law to offenders who are charged with or who have been sentenced for an offense, that is a felony, committed upon a family member, household member, or dating partner, as those terms are defined by present law (R.S. 46:2132).

Proposed law provides as follows:

- (1) When a person is prohibited from communicating with another person pursuant to this provision of present and proposed law, requires the judge to cause to have prepared a Uniform Abuse Prevention Order, which shall be forwarded to the clerk of court for filing and transmittal to the Judicial Administrator's Office, Louisiana Supreme Court, for entry into the Louisiana Protective Order Registry. Further requires the clerk of court to send a copy to the chief law enforcement officer of the parish where the person or persons protected by the order reside.
- (2) Adds that if an order is issued pursuant to these provisions of proposed law, it shall be presumed that the defendant poses a credible threat to the physical safety of the

person or persons protected by the order, and the court shall order that the defendant be prohibited from possessing a firearm for the duration of the order.

- (3) Repeals the present law penalties for persons who violate the prohibition and provides that such persons shall be subject to the present law crime of violation of protective orders (R.S. 14:79).

Present law (R.S. 14:79) defines the crime of violation of protective orders as the willful disobedience of a preliminary or permanent injunction, protective order, temporary restraining order, ex parte protective order, or criminal stay away order issued pursuant to certain provisions of present law.

Proposed law amends the present law crime of violation of protective orders to include orders issued pursuant to the provisions of proposed law (R.S. 46:1846) which prohibit any person who has been charged with or has been sentenced for any crime of violence from communicating with the victim of the offense or any member of the victim's immediate family.

(Amends R.S. 14:34.9(I), (J), (K), and (L) and 35.3(G)(1), (I), (K), (L), and (M) and R.S. 46:1846(A), (C), and (E); Adds R.S. 14:2(B)(48), (49), and (50), 34.9(M), 35.3(N), and 79(A)(3)(d) and R.S. 46:1846(F))