
DIGEST

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HB 896 Original

2018 Regular Session

Smith

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))