

2020 Regular Session

SENATE BILL NO. 505

BY SENATOR SMITH

DOMESTIC VIOLENCE. Provides for a temporary restraining order upon application by a peace officer under certain circumstances. (8/1/20)

AN ACT

To amend and reenact Code of Criminal Procedure Art. 320(G), (H) and (J), and Art.321(C)(5) and (6), R.S. 14:79(A)(3)(c) and (E), R.S. 15:574.4.2(A)(5), and R.S. 46:1846(A) and (C), to enact Code of Criminal Procedure Art. 320(L) and R.S. 15:574.2(A)(6), relative to protective orders; provides for domestic offenses, stalking, and sex offenses; provides for uniform abuse prevention orders; provides for types of bail; provides for violation of protective orders; provides for decisions of committee on parole; prohibits communication between offender and victim; provides for exceptions; makes technical corrections; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Art. 320(G), (H) and (J), and Art.321(C)(5) and (6) is hereby amended and reenacted, and Code of Criminal Procedure Art. 320(L) is hereby enacted to read as follows:

Art. 320. Conditions of bail undertaking

* * *

G. Domestic offenses, stalking, and sex offenses.

1 (1) In determining conditions of release of a defendant who is alleged to have
2 committed an offense against the defendant's family or household member, as
3 defined in R.S. 46:2132(4), or against the defendant's dating partner, as defined in
4 R.S. 46:2151, or who is alleged to have committed the offense of domestic abuse
5 battery under the provisions of R.S. 14:35.3, or who is alleged to have committed
6 the offense of battery of a dating partner under the provisions of R.S. 14:34.9,
7 or who is alleged to have committed the offense of stalking under the provisions of
8 R.S. 14:40.2, or who is alleged to have committed the offense of cyberstalking
9 under the provisions of R.S. 14:40.3, or who is alleged to have committed the
10 offense of violation of protective orders under the provisions of R.S. 14:79, or
11 who is alleged to have committed the offense of unlawful communications under
12 the provisions of R.S. 14:285, or who is alleged to have committed a sexual assault
13 as defined in R.S. 46:2184, ~~or who is alleged to have committed the offense of first~~
14 ~~degree rape under the provisions of R.S. 14:42,~~ the court shall consider the previous
15 criminal history of the defendant and whether the defendant poses a threat or danger
16 to the victim. If the court determines that the defendant poses such a threat or danger,
17 it shall require as a condition of bail that the defendant refrain from going to the
18 residence or household of the victim, the victim's school, and the victim's place of
19 employment or otherwise contacting the victim in any manner whatsoever, and shall
20 refrain from having any further contact with the victim. The court shall also require
21 as a condition of bail that the defendant be prohibited from communicating, by
22 electronic communication, in writing, or orally, with a victim of the offense or
23 with any of the victim's immediate family members. This condition shall not
24 apply if the victim consents by way of a request to the court and the court issues
25 an order permitting the communication. If an immediate family member of the
26 victim consents by way of a request to the court and the court issues an order
27 permitting the communication, then the defendant may contact that person. The
28 court shall also consider any statistical evidence prepared by the United States
29 Department of Justice relative to the likelihood of such defendant or any person in

1 general who has raped or molested victims under the age of thirteen years to commit
2 sexual offenses against a victim under the age of thirteen in the future.

3 (2) If the defendant is alleged to have committed any of the offenses included
4 in Paragraph (1) of this Subsection, ~~the court may require as a condition of bail that~~
5 ~~the defendant be prohibited from communicating, by electronic communication, in~~
6 ~~writing, or orally, with a victim of the offense, or with any of the victim's immediate~~
7 ~~family members, while the case is pending. This condition does not apply if the~~
8 ~~victim consents in person or through a communication through the local prosecuting~~
9 ~~agency.~~ **is denied bail or is unable to post bail and is therefore incarcerated**
10 **prior to trial, the court may issue an order under this Subsection prohibiting the**
11 **defendant from communicating, by electronic communication, in writing, or**
12 **orally, with a victim of the offense, or with any of the victim's immediate family**
13 **members. This condition shall not apply if the victim consents by way of a**
14 **request to the court and the court issues an order permitting the**
15 **communication. If an immediate family member of the victim consents by way**
16 **of a request to the court and the court issues an order permitting the**
17 **communication, then the defendant may contact that person.**

18 **(3) In all cases, the court shall issue and shall file into the record any**
19 **order issued pursuant to this Subsection and shall serve the defendant with the**
20 **order by personal service. The court shall also comply with the provisions of**
21 **Subsection H.**

22 H. Uniform Abuse Prevention Order.

23 (1) ~~If, as part of a bail restriction, an order is issued for purposes of~~
24 ~~preventing violent or threatening acts or harassment against, or contact or~~
25 ~~communication with or physical proximity to, another person for the purpose of~~
26 ~~preventing domestic abuse, stalking, dating violence, or sexual assault,~~ **If the court**
27 **issues any order pursuant to any of the provisions of this Article prohibiting the**
28 **defendant from contacting or communicating with the victim or the victim's**
29 **immediate family members,** the judge shall cause to have prepared a Uniform

1 Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall sign such order, and
 2 shall immediately forward it to the clerk of court for filing, on the next business day
 3 after the order is issued. The clerk of the issuing court shall transmit the Uniform
 4 Abuse Prevention Order to the Judicial Administrator's Office, Louisiana Supreme
 5 Court, for entry into the Louisiana Protective Order Registry, as provided in R.S.
 6 46:2136.2(A), by facsimile transmission or direct electronic input as expeditiously
 7 as possible, but no later than the end of the next business day after the order is filed
 8 with the clerk of court. The clerk of the issuing court shall also send a copy of the
 9 Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), or any
 10 modification thereof, to the chief law enforcement officer of the parish where the
 11 person or persons protected by the order reside. A copy of the Uniform Abuse
 12 Prevention Order shall be retained on file in the office of the chief law enforcement
 13 officer until otherwise directed by the court.

14 (2) If, as part of a ~~bail restriction~~ **any order issued pursuant to any of the**
 15 **provisions of this Article**, an order is issued pursuant to the provisions of this
 16 Paragraph, the court shall also order that the defendant be prohibited from possessing
 17 a firearm for the duration of the Uniform Abuse Prevention Order.

18 * * *

19 J.**(1)** Crimes of violence. ~~If the defendant has been charged with~~
 20 **Notwithstanding the provisions of Subsection G and notwithstanding any other**
 21 **provision of law to the contrary, if the defendant is alleged to have committed**
 22 a crime of violence as defined in R.S. 14:2(B), the court shall require as a condition
 23 of bail ~~that the defendant be prohibited from communicating, by electronic~~
 24 ~~communication, in writing, or orally, with a victim of the offense, or with any of the~~
 25 ~~victim's immediate family members while the case is pending.~~ **that the defendant**
 26 **refrain from going to the residence or household of the victim, the victim's**
 27 **school, and the victim's place of employment or otherwise contacting the victim**
 28 **in any manner whatsoever, and shall refrain from having any further contact**
 29 **with the victim. The court shall also require as a condition of bail that the**

1 defendant be prohibited from communicating, by electronic communication, in
2 writing, or orally, with a victim of the offense, or with any of the victim's
3 immediate family members. This condition does not apply if the victim consents
4 in person or through a communication through the local prosecuting agency by way
5 of a request to the court and the court issues an order permitting the
6 communication. If an immediate family member of the victim consents ~~in person~~
7 ~~or through a communication through the local prosecuting agency;~~ by way of a
8 request to the court and the court issues an order permitting the
9 communication, then the defendant may contact that person.

10 (2) Notwithstanding the provisions of Subsection G and notwithstanding
11 any other provision of law to the contrary, if a defendant alleged to have
12 committed an offense included in Paragraph (1) of this Subsection is denied bail
13 or is unable to post bail and is therefore incarcerated prior to trial, the court
14 shall nevertheless issue an order under this Subsection prohibiting the
15 defendant from communicating, by electronic communication, in writing, or
16 orally, with a victim of the offense, or with any of the victim's immediate family
17 members. This condition shall not apply if the victim consents by way of a
18 request to the court and the court issues an order permitting the
19 communication. If an immediate family member of the victim consents by way
20 of a request to the court and the court issues an order permitting the
21 communication, then the defendant may contact that person.

22 (3) In all cases, the court shall issue and shall file into the record any
23 order issued pursuant to this Subsection and shall serve the defendant with the
24 order by personal service. The court shall also comply with the provisions of
25 Subsection H if applicable.

26 * * *

27 L. Under no circumstances shall any court deny the issuance of a
28 protective order pursuant to any provision of this Article on the ground that a
29 protective order has already been issued under any other provision of law. Any

1 protective order issued pursuant to this Article shall remain in effect for the
 2 time that the criminal case is pending until sentencing unless the person
 3 protected by the protective order moves the court to dissolve the protective
 4 order as to that person and the court grants the motion to dissolve the
 5 protective order as to that person.

6 Art. 321. Types of bail; restrictions

7 * * *

8 C. Any defendant who has been arrested for any of the following offenses
 9 shall not be released on his personal undertaking or with an unsecured personal
 10 surety:

11 * * *

12 (5) R.S. 14:35.3 (domestic abuse battery) or R.S. 14:34.9 (battery of a
 13 dating partner).

14 (6) R.S. 14:37.7 (domestic abuse aggravated assault) or R.S. 14:34.9.1
 15 (aggravated assault upon a dating partner).

16 * * *

17 Section 2. R.S. 14:79(A)(3)(c) and (E) are hereby amended and reenacted to read
 18 as follows:

19 §79. Violation of protective orders

20 A. * * *

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

23 * * *

24 (c) A condition of a parole release pursuant to R.S. 15:574.4.2(A)(5) or any
 25 other condition of parole which requires that the parolee stay away from any
 26 specific person.

27 * * *

28 E.(1) Law enforcement officers shall use every reasonable means, including
 29 but not limited to immediate arrest of the violator, to enforce a preliminary or

1 permanent injunction or protective order obtained pursuant to R.S. 9:361, R.S. 9:372,
 2 R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., R.S. 46:2181 et seq.,
 3 Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and
 4 3607.1, or Code of Criminal Procedure Articles ~~327.1, 335.1, 335.2,~~ **320** and 871.1
 5 after a contradictory court hearing, or to enforce a temporary restraining order or ex
 6 parte protective order issued pursuant to R.S. 9:361, R.S. 9:372, R.S. 46:2131 et seq.,
 7 R.S. 46:2151, R.S. 46:2171 et seq., R.S. 46:2181 et seq., Children's Code Article
 8 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal
 9 Procedure ~~Articles 327.1, 335.1, and 335.2~~ **Article 320** if the defendant has been
 10 given notice of the temporary restraining order or ex parte protective order by service
 11 of process as required by law.

12 (2) Law enforcement officers shall at a minimum issue a summons to the
 13 person in violation of a temporary restraining order, a preliminary or permanent
 14 injunction, or a protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372,
 15 R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2181 et seq., Children's Code Article
 16 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal
 17 Procedure Articles 30, ~~327.1, 335.2~~ **320**, and 871.1.

18 * * *

19 Section 3. R.S. 15:574.4.2(A)(5) is hereby amended and reenacted and R.S.
 20 15:574.2(A)(6) is hereby enacted to read as follows:

21 §574.4.2. Decisions of committee on parole; nature, order, and conditions of parole;
 22 rules of conduct; infectious disease testing

23 A. * * *

24 **(5)(a) If the offender has been convicted of a crime of violence as defined**
 25 **in R.S. 14:2 committed upon any person, or any offense, that is a felony,**
 26 **committed upon a family member, household member, or dating partner, as**
 27 **those terms are defined by R.S. 46:2132, the committee on parole shall require**
 28 **as a condition of parole that the offender refrain from going to the residence or**
 29 **household of the victim, the victim's school, and the victim's place of**

1 employment or otherwise contacting the victim in any manner whatsoever, and
2 shall refrain from having any further contact with the victim. The committee
3 on parole shall also require as a condition of parole that the offender refrain
4 from communicating, by electronic communication, in writing, or orally, with
5 a victim of the offense, or with any of the victim's immediate family members.
6 For the purposes of this Subsection, "immediate family member" means the
7 spouse, mother, father, aunt, uncle, sibling, or child of the victim, whether
8 related by blood, marriage, or adoption. If the victim or an immediate family
9 member of the victim informs the committee on parole in writing that he does
10 not wish for the committee on parole to impose the conditions in this Subsection,
11 the committee on parole shall not impose the conditions in this Subsection as to
12 the person making the written request.

13 (b) Prior to the release of the offender on parole, a judge shall cause to
14 have prepared a Uniform Abuse Prevention Order, as provided in R.S.
15 46:2136.2(C), shall sign such order, and shall immediately forward it to the
16 clerk of court for filing on the day that the order is issued. The clerk of the
17 issuing court shall transmit the Uniform Abuse Prevention Order to the Judicial
18 Administrator's Office, Louisiana Supreme Court, for entry into the Louisiana
19 Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile
20 transmission or direct electronic input as expeditiously as possible, but no later
21 than the end of the next business day after the order is filed with the clerk of
22 court. The clerk of the issuing court shall also send a copy of the Uniform Abuse
23 Prevention Order, as provided in R.S. 46:2136.2(C), or any modification
24 thereof, to the chief law enforcement officer of the parish where the person or
25 persons protected by the order reside by facsimile transmission or direct
26 electronic input as expeditiously as possible, but no later than the end of the
27 next business day after the order is filed with the clerk of court. A copy of the
28 Uniform Abuse Prevention Order shall be retained on file in the office of the
29 chief law enforcement officer until otherwise directed by the court.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alan Miller.

DIGEST

SB 505 Original 2020 Regular Session Smith

Present law provides for conditions of bail undertaking for domestic offenses, stalking, and sex offenses.

Present law requires that, determining conditions of release of a defendant who is alleged to have committed an offense against the defendant's family or household member, or against the defendant's dating partner, or who is alleged to have committed the offense of domestic abuse battery, or who is alleged to have committed the offense of stalking, or who is alleged to have committed a sexual assault, or who is alleged to have committed the offense of first degree rape, that the court consider the previous criminal history of the defendant and whether the defendant poses a threat or danger to the victim. If the court determines that the defendant poses such a threat or danger, it shall require as a condition of bail that the defendant refrain from going to the residence or household of the victim, the victim's school, and the victim's place of employment or otherwise contacting the victim in any manner whatsoever, and refrain from having any further contact with the victim.

Present law also requires the court to consider any statistical evidence prepared by the U.S. Dept. of Justice relative to the likelihood of such defendant or any person in general who has raped or molested victims under the age of 13 years to commit sexual offenses against a victim under the age of 13 in the future.

Proposed law retains present law and adds the offenses of battery of a dating partner, cyberstalking, violation of a protective order, and unlawful communication to the list of alleged offenses that the court is required to consider in addition to the previous criminal history of the defendant and whether the defendant poses a threat or danger to the victim when determining the conditions of release.

Proposed law requires the court to also consider as a condition of bail that the defendant be prohibited from communicating, by electronic communication, in writing, or orally, with a victim of the offense, or with any of the victim's immediate family members. Proposed law prohibits this condition from applying if the victim consents by way of a request to the court and the court issues an order permitting the communication. If an immediate family member of the victim consents by way of a request to the court and the court issues an order permitting the communication, then the defendant is authorized to contact that person.

Present law authorizes the court to require as a condition of bail that the defendant be prohibited from communicating, by electronic communication, in writing, or orally, with a victim of the offense, or with any of the victim's immediate family members, while the case is pending, if the defendant is alleged to have committed any of the offenses included in present law, but not if the victim consents in person or through a communication through the local prosecuting agency.

Proposed law authorizes the court, in the event that the defendant is denied bail or is unable to post bail and is therefore incarcerated prior to trial, to issue an order prohibiting the defendant from communicating, by electronic communication, in writing, or orally, with a victim of the offense, or with any of the victim's immediate family members, but not if the victim or an immediate family member consents by way of a request to the court and the court issues an order permitting the communication.

Proposed law requires that in all cases, the court issue and shall file into the record any order

issued and serve the defendant with the order by personal service.

Present law provides for conditions of bail undertaking for crimes of violence.

Present law requires the court, if the defendant has been charged with a crime of violence, to set as a condition of bail that the defendant be prohibited from communicating, by electronic communication, in writing, or orally, with a victim of the offense, or with any of the victim's immediate family members while the case is pending, but not if the victim or an immediate family member consents in person or through a communication through the local prosecuting agency.

Proposed law requires the court to also consider as a condition of bail that the defendant be prohibited from communicating, by electronic communication, in writing, or orally, with a victim of the offense, or with any of the victim's immediate family members. Proposed law prohibits this condition from applying if the victim consents by way of a request to the court and the court issues an order permitting the communication. If an immediate family member of the victim consents by way of a request to the court and the court issues an order permitting the communication, then the defendant is authorized to contact that person.

Present law authorizes the court to require as a condition of bail that the defendant be prohibited from communicating, by electronic communication, in writing, or orally, with a victim of the offense, or with any of the victim's immediate family members, while the case is pending, if the defendant is alleged to have committed any of the offenses included in present law, but not if the victim consents in person or through a communication through the local prosecuting agency.

Proposed law authorizes the court, in the event that the defendant is denied bail or is unable to post bail and is therefore incarcerated prior to trial, to issue an order prohibiting the defendant from communicating, by electronic communication, in writing, or orally, with a victim of the offense, or with any of the victim's immediate family members, but not if the victim or an immediate family member consents by way of a request to the court and the court issues an order permitting the communication.

Proposed law prohibits a court from denying the issuance of a protective order on the ground that a protective order has already been issued under any other provision of law. Proposed law further requires that any protective order issued pursuant to proposed law remain in effect for the entirety of the time that the criminal case is pending until sentencing unless the person protected by the protective order moves the court to dissolve the protective order as to that person and the court grants the motion to dissolve the protective order as to that person.

Present law sets forth certain circumstances under which a defendant is prohibited from being released on his personal undertaking or with an unsecured personal surety.

Proposed law retains present law and adds battery and aggravated assault of a dating partner as offenses in which present law applies.

Present law authorizes the committee on parole to make rules for the conduct of persons granted parole. Present law requires that when a prisoner is released on parole, the committee require as a condition of his parole that he refrain from engaging in criminal conduct.

Proposed law requires that if the offender has been convicted of a crime of violence committed upon any person, or any offense, that is a felony, committed upon a family member, household member, or dating partner, the committee on parole, as a condition of parole that the offender, order that the defendant refrain from going to the residence or household of the victim, the victim's school, and the victim's place of employment or otherwise contacting the victim in any manner whatsoever, and shall refrain from having any

further contact with the victim.

Proposed law requires the committee on parole to require as a condition of parole that the offender refrain from communicating, by electronic communication, in writing, or orally, with a victim of the offense, or with any of the victim's immediate family members.

Proposed law requires that, prior to the release of the offender on parole, a judge cause to have prepared a Uniform Abuse Prevention Order, sign the order, and immediately forward it to the clerk of court for filing on the day that the order is issued. Proposed law requires the clerk of the issuing court to transmit the Uniform Abuse Prevention Order to the chief law enforcement officer of the parish where the person or persons protected by the order reside 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.

Present law prohibits any person who has been charged by bill of information or indictment with any crime of violence or any offense, that is a felony, committed upon a family member, household member, or dating partner, or any immediate family member of such person, 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.

Proposed law retains present law and adds the felony sex offenses and felony human trafficking-related offenses as offenses in which present law applies.

Present law prohibits any person who has been sentenced for a crime of violence or any offense, that is a felony, committed upon a family member, household member, or dating partner, or any immediate family member of such person, 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 Dept. 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.

Proposed law retains present law and adds persons found not guilty by reason of insanity of crimes of violence, felony sex offenses and felony human trafficking-related offenses as offenses in which present law applies.

Effective August 1, 2020.

(Amends C.Cr.P. Art. 320(G), (H) and (J), and Art.321(C)(5) and (6), R.S. 14:79(A)(3)(c) and (E), R.S. 15:574.4.2(A)(5), and R.S. 46:1846(A) and (C); adds C.Cr.P. Art. 320(L) and R.S. 15:574.2(A)(6))