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The original instrument was prepared by Alan Miller. The following digest, which does not constitute a part of the legislative instrument, was prepared by Alden A. Clement, Jr.

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SB 505 Engrossed

DIGEST  
2020 Regular Session

Smith

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

Present law requires that, in 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, the court is to consider the previous criminal history of the defendant and whether the defendant poses a threat or danger to the victim. Present law further provides that if the court determines that the defendant poses a threat or danger, it must 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 from otherwise contacting the victim in any manner whatsoever, and refrain from having any further contact with the victim. Present law requires the court to consider any statistical evidence prepared by the U.S. Dept. of Justice relative to the likelihood of the 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. Proposed law further requires the court to 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 further 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, and that 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.

Proposed law otherwise retains present law.

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 further requires that in all cases, the court is to issue and file into the record any order issued and serve the defendant with the order by personal service.

Proposed law otherwise retains present law.

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 via the 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 further 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. Proposed law further provides that 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.

Proposed law otherwise retains present law.

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 further 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.

Proposed law otherwise retains present law.

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 further 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 refrain from having any further contact with the victim. Proposed law further 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 further requires that, prior to the release of the offender on parole, a judge of the court of conviction 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 further 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.

Proposed law otherwise retains present law.

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 to which present law applies.

Present law provides that the court is to order a defendant who is alleged to have committed the offense of first degree rape, and may order 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, to be equipped with a global positioning monitoring system as a condition of release on bail.

Proposed law deletes certain provisions of present law in favor of comparable provisions in proposed law, and otherwise retains present law.

Proposed law provides that certain provisions of present law and proposed law apply to offenses "committed against any person."

Present law provides that for purposes of present law relative to domestic abuse assistance, the term "family members" means spouses, former spouses, parents and children, stepparents, stepchildren, foster parents, and foster children. Present law further provides that "household members" means any person presently or formerly living in the same residence with the defendant and who is involved or has been involved in a sexual or intimate relationship with the defendant. Present law further provides that "dating partner" means any person protected from violence under certain provisions of present law.

Proposed law retains present law and adds that "family member" also includes any child presently or formerly living in the same residence with the defendant, or any child of the defendant regardless of where the child resides.

Effective August 1, 2020.

(Amends C.Cr.P. Art. 320(G), (H), (I)(1)(a), 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) and 2132(4); adds C.Cr.P. Art. 320(L) and R.S. 15:574.2(A)(6))

### Summary of Amendments Adopted by Senate

#### Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Add proposed law relative to a global positioning monitoring system as a condition

of release on bail under certain circumstances.

2. Provide that certain provisions of present law and proposed law apply to offenses "committed against any person."
3. Add certain children to the definition of "family members" for purposes of present law relative to domestic abuse assistance.
4. Make technical changes to conform citations in present law and proposed law to the conventions for citations applicable to the Code of Criminal Procedure.