

RÉSUMÉ DIGEST

ACT 246 (SB 505)

2020 Regular Session

Smith

Prior law (C.Cr.P. Art. 320) provided for certain conditions of bail for domestic offenses, stalking, and sex offenses.

Prior law (C.Cr.P. Art. 320(G)) required 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, stalking, a sexual assault, or 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. Prior law further provided 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.

New law retains prior law and expands its application to the offenses of battery of a dating partner, cyberstalking, violation of a protective order, and unlawful communication.

Prior law (C.Cr.P. Art. 320(G)) authorized 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 prior law, but not if the victim consents in person or through a communication through the local prosecuting agency.

For these prior and new law offenses, new law amends prior law to require the court, as a condition of bail, to prohibit 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, unless the victim or the victim's immediately family member consents by way of a request to the court and the court issues an order permitting the communication.

For these prior and new law offenses, new law provides that if the defendant is denied bail or is unable to post bail and is therefore incarcerated, the court may 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, unless 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.

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

Prior law (C.Cr.P. Art. 320(J)) provided for conditions of bail for crimes of violence. Prior law required 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.

New law amends prior law to require the court to impose as a condition of bail that the defendant be prohibited from going to the residence or house hold of the victim, the victim's school, and the victim's place of employment and from otherwise contacting the victim in any manner. New law retains the requirement that the court prohibit the defendant from communicating with the victim or an immediate family member of the victim, unless the victim or the victim's family member consents by way of a request to the court and the court issues an order permitting the communication.

New law further provides that if the defendant is denied bail or is unable to post bail and is therefore incarcerated prior to trial, the court shall 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, unless 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.

New 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.

New law further requires that any protective order issued pursuant to new 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.

Prior law (C.Cr.P. Art. 320(H)) required that for orders issued prohibiting the defendant from threatening acts against or communicating with the victim or the victim's family member, the judge shall cause to have prepared a Uniform Abuse Prevention Order.

New law retains prior law but expands its application to orders issued under Prior law and new law.

Prior law (C.Cr.P. Art. 320 (I)) provided that the court is required 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.

New law retains prior law with respect to the offense of first degree rape, but amends Prior law with respect to the court's authority to require the defendant to be equipped with a global positioning device to apply this authority to any offense enumerated in Prior and New law (C.Cr.P. Art. 320(G) and (J)).

Prior law (C.Cr.P. Art. 321) set forth certain circumstances under which a defendant is prohibited from being released on his personal undertaking or with an unsecured personal surety.

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

Prior law (R.S. 15:574.4.2) authorized the committee on parole to impose certain conditions upon persons who are released on parole.

New law retains prior law but adds a requirement that if the offender has been convicted of a crime of violence committed upon any person, any felony sex offense committed upon any person, any felony human trafficking-related offense 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 shall require, as a condition of parole, that the offender 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. New 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.

New law further requires that, prior to the release of the offender on parole, a judge of the court of conviction shall 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. New 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.

New law provides that nothing in new law shall impair, limit, or abrogate the authority of the committee on parole to require as a condition of parole any other protective order or any other restriction under any provision of prior or new law.

Prior law (R.S. 46:1846(A)) 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.

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

Prior law (R.S. 46:1846(C)) prohibited 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.

New law specifies that prior law applies to crimes of violence committed against any person, adds that prior law applies to felony sex offenses committed against any person and felony human trafficking-related offenses committed against any person, and expands the application of prior law to persons who are found not guilty by reason of insanity for such prior and new law offenses.

New law further provides that any sentencing order issued pursuant to this provision of law shall be reflected in the sentencing minutes of the issuing court and the issuing court shall notify the Dept. of Public Safety and Corrections of the issuance of the sentencing order.

Prior law (R.S. 46:2132) provided that for purposes of prior law relative to domestic abuse assistance, the term "family members" means spouses, former spouses, parents and children, stepparents, stepchildren, foster parents, and foster children. Prior 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. Prior law further provided that "dating partner" means any person protected from violence under certain provisions of prior law.

New law retains prior 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))