

SENATE BILL NO. 505

BY SENATOR SMITH

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AN ACT

To amend and reenact Code of Criminal Procedure 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), R.S. 46:1846(A) and (C) and 2132(4), 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), (I)(1)(a), 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) In determining conditions of release of a defendant who is alleged to have committed an offense against the defendant's family or household member, as defined in R.S. 46:2132(4), or against the defendant's dating partner, as defined in R.S. 46:2151, or who is alleged to have committed the offense of domestic abuse battery under the provisions of R.S. 14:35.3, **or who is alleged to have committed the offense of battery of a dating partner under the provisions of R.S. 14:34.9,** or who is alleged to have committed the offense of stalking under the provisions of R.S. 14:40.2, **or who is alleged to have committed the offense of cyberstalking under the provisions of R.S. 14:40.3,** or who is alleged to have committed the **offense of violation of protective orders under the provisions of R.S. 14:79,** or

1 who is alleged to have committed the offense of unlawful communications under
2 the provisions of R.S. 14:285, or who is alleged to have committed a sexual assault
3 as defined in R.S. 46:2184, ~~or who is alleged to have committed the offense of first~~
4 ~~degree rape under the provisions of R.S. 14:42~~, the court shall consider the previous
5 criminal history of the defendant and whether the defendant poses a threat or danger
6 to the victim. If the court determines that the defendant poses such a threat or danger,
7 it shall require as a condition of bail that the defendant refrain from going to the
8 residence or household of the victim, the victim's school, and the victim's place of
9 employment or otherwise contacting the victim in any manner whatsoever, and shall
10 refrain from having any further contact with the victim. **The court shall also require**
11 **as a condition of bail that the defendant be prohibited from communicating, by**
12 **electronic communication, in writing, or orally, with a victim of the offense or**
13 **with any of the victim's immediate family members. This condition shall not**
14 **apply if the victim consents by way of a request to the court and the court issues**
15 **an order permitting the communication. If an immediate family member of the**
16 **victim consents by way of a request to the court and the court issues an order**
17 **permitting the communication, then the defendant may contact that person.** The
18 court shall also consider any statistical evidence prepared by the United States
19 Department of Justice relative to the likelihood of such defendant or any person in
20 general who has raped or molested victims under the age of thirteen years to commit
21 sexual offenses against a victim under the age of thirteen in the future.

22 (2) If the defendant is alleged to have committed any of the offenses included
23 in Paragraph ~~Subparagraph~~ (1) of this Subsection ~~Paragraph~~, ~~the court may~~
24 ~~require as a condition of bail that the defendant be prohibited from communicating,~~
25 ~~by electronic communication, in writing, or orally, with a victim of the offense, or~~
26 ~~with any of the victim's immediate family members, while the case is pending. This~~
27 ~~condition does not apply if the victim consents in person or through a~~
28 ~~communication through the local prosecuting agency. **and is denied bail or is**~~
29 **unable to post bail and is therefore incarcerated prior to trial, the court may**
30 **issue an order under this Paragraph prohibiting the defendant from**

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

8 (3) In all cases, the court shall issue and shall file into the record any
 9 order issued pursuant to this Paragraph and shall serve the defendant with the
 10 order by personal service. The court shall also comply with the provisions of
 11 Paragraph H of this Article.

12 H. Uniform Abuse Prevention Order.

13 (1) ~~If, as part of a bail restriction, an order is issued for purposes of~~
 14 ~~preventing violent or threatening acts or harassment against, or contact or~~
 15 ~~communication with or physical proximity to, another person for the purpose of~~
 16 ~~preventing domestic abuse, stalking, dating violence, or sexual assault, the court~~
 17 ~~issues any order pursuant to any of the provisions of this Article prohibiting the~~
 18 ~~defendant from contacting or communicating with the victim or the victim's~~
 19 ~~immediate family members,~~ the judge shall cause to have prepared a Uniform
 20 Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall sign such order, and
 21 shall immediately forward it to the clerk of court for filing, on the next business day
 22 after the order is issued. The clerk of the issuing court shall transmit the Uniform
 23 Abuse Prevention Order to the Judicial Administrator's Office, Louisiana Supreme
 24 Court, for entry into the Louisiana Protective Order Registry, as provided in R.S.
 25 46:2136.2(A), by facsimile transmission or direct electronic input as expeditiously
 26 as possible, but no later than the end of the next business day after the order is filed
 27 with the clerk of court. The clerk of the issuing court shall also send a copy of the
 28 Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), or any
 29 modification thereof, to the chief law enforcement officer of the parish where the
 30 person or persons protected by the order reside. A copy of the Uniform Abuse

1 Prevention Order shall be retained on file in the office of the chief law enforcement
 2 officer until otherwise directed by the court.

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

7 I. Global positioning monitoring. (1)(a) In addition, the court shall order a
 8 defendant who is alleged to have committed the offense of first degree rape under the
 9 provisions of R.S. 14:42, and may order a defendant who is alleged to have
 10 committed an offense ~~against the defendant's family or household member, as~~
 11 ~~defined in R.S. 46:2132(4), or against the defendant's dating partner, as defined in~~
 12 ~~R.S. 46:2151, or who is alleged to have committed the offense of domestic abuse~~
 13 ~~battery under the provisions of R.S. 14:35.3, or who is alleged to have committed the~~
 14 ~~offense of stalking under the provisions of R.S. 14:40.2, or who is alleged to have~~
 15 ~~committed a sexual assault as defined in R.S. 46:2184~~ **enumerated in Paragraph**
 16 **G or J of this Article**, to be equipped with a global positioning monitoring system
 17 as a condition of release on bail.

18 * * *

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

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

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

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

25 * * *

26 L. Under no circumstances shall any court deny the issuance of a
 27 protective order pursuant to any provision of this Article on the ground that a
 28 protective order has already been issued under any other provision of law. Any
 29 protective order issued pursuant to this Article shall remain in effect for the
 30 time that the criminal case is pending until sentencing unless the person

1 protected by the protective order moves the court to dissolve the protective
2 order as to that person and the court grants the motion to dissolve the
3 protective order as to that person.

4 Art. 321. Types of bail; restrictions

5 * * *

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

9 * * *

10 (5) R.S. 14:35.3 (domestic abuse battery) **or R.S. 14:34.9 (battery of a**
11 **dating partner).**

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

14 * * *

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

17 §79. Violation of protective orders

18 A. * * *

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

21 * * *

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

25 * * *

26 E.(1) Law enforcement officers shall use every reasonable means, including
27 but not limited to immediate arrest of the violator, to enforce a preliminary or
28 permanent injunction or protective order obtained pursuant to R.S. 9:361, R.S. 9:372,
29 R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., R.S. 46:2181 et seq.,
30 Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and

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

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

15 * * *

16 Section 3. R.S. 15:574.4.2(A)(5) is hereby amended and reenacted and R.S.
 17 15:574.2(A)(6) is hereby enacted to read as follows:

18 §574.4.2. Decisions of committee on parole; nature, order, and conditions of parole;
 19 rules of conduct; infectious disease testing

20 A. * * *

21 **(5)(a) If the offender has been convicted of a crime of violence as defined**
 22 **in R.S. 14:2 committed upon any person, any felony sex offense as defined in**
 23 **R.S. 46:1844(W) committed upon any person, any felony human**
 24 **trafficking-related offense as defined in R.S. 46:1844(W) committed upon any**
 25 **person, or any offense, that is a felony, committed upon a family member,**
 26 **household member, or dating partner, as those terms are defined by R.S.**
 27 **46:2132, the committee on parole shall require as a condition of parole that the**
 28 **offender refrain from going to the residence or household of the victim, the**
 29 **victim's school, and the victim's place of employment or otherwise contacting**
 30 **the victim in any manner whatsoever, and shall refrain from having any further**

1 contact with the victim. The committee on parole shall also require as a
2 condition of parole that the offender refrain from communicating, by electronic
3 communication, in writing, or orally, with a victim of the offense, or with any
4 of the victim's immediate family members. For the purposes of this Subsection,
5 "immediate family member" means the spouse, mother, father, aunt, uncle,
6 sibling, or child of the victim, whether related by blood, marriage, or adoption.
7 If the victim or an immediate family member of the victim informs the
8 committee on parole in writing that he does not wish for the committee on
9 parole to impose the conditions in this Subsection, the committee on parole shall
10 not impose the conditions in this Subsection as to the person making the written
11 request. Nothing in this Paragraph shall be construed so as to impair, limit, or
12 abrogate the authority of the committee on parole to require as a condition of
13 parole any other protective order or any other restriction under any provision
14 of law.

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

1 the chief law enforcement officer until otherwise directed by the court.

2 (6) If parole is revoked for any reason, all good time earned or any additional
 3 credits earned or which could have been earned on that portion of the sentence
 4 served prior to the granting of parole shall be forfeited, and the parolee shall serve
 5 the remainder of the sentence as of the date of release on parole.

6 * * *

7 Section 4. R.S. 46:1846(A) and (C) and 2132(4) are hereby amended and reenacted
 8 to read as follows:

9 §1846. Communication between offender and victim prohibited; exceptions

10 A. A person who has been charged by bill of information or indictment with
 11 any crime of violence as defined in R.S. 14:2 committed upon any person, any
 12 felony sex offense as defined in R.S. 46:1844(W) committed upon any person,
 13 any felony human trafficking-related offense as defined in R.S. 46:1844(W)
 14 committed upon any person, or any offense, that is a felony, committed upon a
 15 family member, household member, or dating partner, as those terms are defined by
 16 R.S. 46:2132, or any immediate family member of such person, shall be prohibited
 17 from communicating, either by electronic communication, in writing, or orally, with
 18 a victim of the offense, or any of his immediate family members for which the
 19 person has been charged or for which disposition of the case is pending.

20 * * *

21 C. A person who has been sentenced or found not guilty by reason of
 22 insanity for a crime of violence as defined in R.S. 14:2 committed upon any
 23 person, any felony sex offense as defined in R.S. 46:1844(W) committed upon
 24 any person, any felony human trafficking-related offense as defined in R.S.
 25 46:1844(W) committed upon any person, or any offense, that is a felony,
 26 committed upon a family member, household member, or dating partner, as those
 27 terms are defined by R.S. 46:2132, or any immediate family member of such person,
 28 shall be prohibited from communicating, either by electronic communication, in
 29 writing, or orally, with a victim of the offense, or any of his immediate family
 30 members, for which the person has been sentenced unless the victim or his

1 immediate family members initiate the communication through the Department of
 2 Public Safety and Corrections, and it is agreed that the victim and the offender
 3 participate in a formally defined restorative justice program administered through the
 4 department. Any sentencing order issued pursuant to this Subsection shall be
 5 reflected in the sentencing minutes of the issuing court. The issuing court shall
 6 notify the Department of Public Safety and Corrections of the issuance of the
 7 sentencing order.

8 * * *

9 §2132. Definitions

10 As used in this Part:

11 * * *

12 (4) "Family members" means spouses, former spouses, parents and children,
 13 stepparents, stepchildren, foster parents, and foster children. "Household members"
 14 means any person presently or formerly living in the same residence with the
 15 defendant and who is involved or has been involved in a sexual or intimate
 16 relationship with the defendant ~~and who is seeking protection under this Part~~, **or any**
 17 **child presently or formerly living in the same residence with the defendant, or**
 18 **any child of the defendant regardless of where the child resides.** "Dating partner"
 19 means any person protected from violence under R.S. 46:2151 ~~who is seeking~~
 20 ~~protection under this Part~~. If a parent or grandparent is being abused by an adult
 21 child, adult foster child, or adult grandchild, the provisions of this Part shall apply
 22 to any proceeding brought in district court.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____