

2015 Regular Session

SENATE BILL NO. 36

BY SENATORS AMEDEE, CHABERT, JOHNS, MORRELL AND GARY SMITH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

SEX OFFENSES. Provides relative to sexual assault protective orders. (8/1/15)

AN ACT

To amend and reenact Code of Criminal Procedure Article 327.1 and 335.1(A)(1)(a) and (c), R.S. 14:79(A)(1)(a) and (E), and R.S. 46:2136.2(A) and (B), and to enact Chapter 28-D of Title 46 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 46:2181 through 2191, relative to protective orders; to provide for sexual assault protective orders; to provide relative to procedures for obtaining a sexual assault protective order; to provide definitions; to provide penalties; to provide relative to the Louisiana Protective Order Registry; to provide relative to the crime of violation of protective orders; to provide relative to protective orders as bail restrictions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Article 327.1 and 335.1(A)(1)(a) and (c) are hereby amended and reenacted to read as follows:

Art. 327.1. Bail restrictions to be transmitted to Louisiana Protective Order Registry
If, as part of a bail restriction, an order is issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person for the purpose of preventing domestic

1 abuse, stalking, ~~or~~ dating violence, or nonconsensual contact following an alleged
 2 sexual assault as defined in R.S. 46:2183, the judge shall cause to have prepared
 3 a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall sign such
 4 order, and shall forward it to the clerk of court for filing by the end of the next
 5 business day after the order is issued. The clerk of the issuing court shall transmit the
 6 Uniform Abuse Prevention Order to the Judicial Administrator's Office, Louisiana
 7 Supreme Court, for entry into the Louisiana Protective Order Registry, as provided
 8 in R.S. 46:2136.2(A), by facsimile transmission or direct electronic input as
 9 expeditiously as possible, but no later than the end of the next business day after the
 10 order is filed with the clerk of court. The clerk of the issuing court shall also send a
 11 copy of the Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), or
 12 any modification thereof, to the chief law enforcement officer of the parish where
 13 the person or persons protected by the order reside by facsimile transmission or
 14 direct electronic input as expeditiously as possible, but no later than the end of the
 15 next business day after the order is filed with the clerk of court. A copy of the
 16 Uniform Abuse Prevention Order shall be retained on file in the office of the chief
 17 law enforcement officer until otherwise directed by the court.

18 * * *

19 Art. 335.1. Offenses against a family or household member or dating partner;
 20 victims of sexual assault; provisions for forfeiture, arrest,
 21 modification

22 A.(1)(a) In determining conditions of release of a defendant who is alleged
 23 to have committed an offense against the defendant's family or household member,
 24 as defined in R.S. 46:2132(4), or against the defendant's dating partner, as defined
 25 in R.S. 46:2151, or who is alleged to have committed the offense of domestic abuse
 26 battery under the provisions of R.S. 14:35.3, or who is alleged to have committed the
 27 offense of stalking under the provisions of R.S. 14:40.2, or who is alleged to have
 28 committed a sexual assault as defined in R.S. 46:2183, the court shall consider
 29 whether the defendant poses a threat or danger to the victim. If the court determines

1 that the defendant poses such a threat or danger, it shall require as a condition of bail
 2 that the defendant refrain from going to the residence or household of the victim, the
 3 victim's school, and the victim's place of employment or otherwise contacting the
 4 victim in any manner whatsoever, and shall refrain from having any further contact
 5 with the victim.

6 * * *

7 (c) ~~If, as part of a bail restriction, an order is issued pursuant to the provisions~~
 8 ~~of this Paragraph, the court shall also order~~ **As part of a bail restriction the judge**
 9 **may, in his discretion, also order** that the defendant be prohibited from possessing
 10 a firearm for the duration of the Uniform Abuse Prevention Order. For the purposes
 11 of this Subparagraph, "firearm" means any pistol, revolver, rifle, shotgun, machine
 12 gun, submachine gun, black powder weapon, or assault rifle that is designed to fire
 13 or is capable of firing fixed cartridge ammunition or from which a shot or projectile
 14 is discharged by an explosive.

15 * * *

16 Section 2. R.S. 14:79(A)(1)(a) and (E) are hereby amended and reenacted to read
 17 as follows:

18 §79. Violation of protective orders

19 A.(1)(a) Violation of protective orders is the willful disobedience of a
 20 preliminary or permanent injunction or protective order issued pursuant to R.S. 9:361
 21 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., **R.S.**
 22 **46:2181 et seq.**, Children's Code Article 1564 et seq., Code of Civil Procedure
 23 Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 327.1, 335.1,
 24 335.2, and 871.1 after a contradictory court hearing, or the willful disobedience of
 25 a temporary restraining order or any ex parte protective order issued pursuant to R.S.
 26 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq.,
 27 criminal stay-away orders as provided for in Code of Criminal Procedure Articles
 28 327.1, 335.1, 335.2, Children's Code Article 1564 et seq., or Code of Civil Procedure
 29 Articles 3604 and 3607.1, if the defendant has been given notice of the temporary

1 restraining order or ex parte protective order by service of process as required by
2 law.

3 * * *

4 E.(1) Law enforcement officers shall use every reasonable means, including
5 but not limited to immediate arrest of the violator, to enforce a preliminary or
6 permanent injunction or protective order obtained pursuant to R.S. 9:361, R.S. 9:372,
7 R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., **R.S. 46:2181 et seq.**,
8 Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and
9 3607.1, or Code of Criminal Procedure Articles 327.1, 335.1, 335.2, and 871.1 after
10 a contradictory court hearing, or to enforce a temporary restraining order or ex parte
11 protective order issued pursuant to R.S. 9:361, R.S. 9:372, R.S. 46:2131 et seq., R.S.
12 46:2151, R.S. 46:2171 et seq., **R.S. 46:2181 et seq.**, Children's Code Article 1564
13 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal
14 Procedure Articles 327.1, 335.1, and 335.2 if the defendant has been given notice of
15 the temporary restraining order or ex parte protective order by service of process as
16 required by law.

17 (2) Law enforcement officers shall at a minimum issue a summons to the
18 person in violation of a temporary restraining order, a preliminary or permanent
19 injunction, or a protective order issued pursuant to R.S. 9:361 et seq., R.S. 9:372,
20 R.S. 46:2131 et seq., R.S. 46:2151, **R.S. 46:2181 et seq.**, Children's Code Article
21 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal
22 Procedure Articles 30, 327.1, 335.2, and 871.1.

23 Section 3. R.S. 46:2136.2(A) and (B) are hereby amended and reenacted and Chapter
24 28-D of Title 46 of the Louisiana Revised Statutes of 1950, comprised of R.S. 46:2181
25 through 2191, is hereby enacted to read as follows:

26 §2136.2. Louisiana Protective Order Registry

27 A. In order to provide a statewide registry for abuse prevention orders to
28 prevent domestic and dating violence **and sexual assault** and to aid law
29 enforcement, prosecutors, and the courts in handling such matters, there shall be

1 created a Louisiana Protective Order Registry administered by the Judicial
 2 Administrator's Office, Louisiana Supreme Court. The Judicial Administrator's
 3 Office shall collect the data transmitted to it from the courts of the state and enter it
 4 into the Louisiana Protective Order Registry as expeditiously as possible.

5 B. The Louisiana Protective Order Registry encompasses temporary
 6 restraining orders, protective orders, preliminary injunctions, permanent injunctions,
 7 and court-approved consent agreements resulting from actions brought pursuant to
 8 R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., **R.S. 46:2181 et seq.**, R.S.
 9 9:361 et seq., R.S. 9:372, Children's Code Article 1564 et seq., Code of Civil
 10 Procedure Article 3607.1, or peace bonds pursuant to Code of Criminal Procedure
 11 Article 30(B), or as part of the disposition, sentence, or bail condition of a criminal
 12 matter pursuant to Code of Criminal Procedure Articles 327.1, 335.1, 335.2, or 871.1
 13 as long as such order is issued for the purpose of preventing violent or threatening
 14 acts or harassment against, contact or communication with, or physical proximity to,
 15 another person to prevent domestic abuse, stalking, ~~or dating violence,~~ **or contact**
 16 **with a victim of sexual assault.**

17 * * *

18 **CHAPTER 28-D. PROTECTION OF VICTIMS OF SEXUAL ASSAULT ACT**

19 **§2181. Legislative purpose**

20 **A. The legislature hereby finds and declares that sexual assault is a**
 21 **major public health problem and a violation of human rights that affects many**
 22 **women and men at some time in their lives. These effects range from threats of**
 23 **violence or actual violence to the daily limitations that the fear of violence places**
 24 **on victims' lives. The ripple effect of sexual assault threatens the peace, order,**
 25 **health, safety, and general welfare of the state and its inhabitants.**

26 **B. According to the Centers for Disease Control, approximately one in**
 27 **five women and one in seventy-one men have experienced rape in their lifetime.**
 28 **Rape is recognized as the most under-reported crime, and victims of rape and**
 29 **other forms of sexual assault who do not report the crime still desire safety and**

1 protection from future interactions with the offender. Additionally, some cases
2 in which rape or other sexual assault is reported are not prosecuted, as the
3 nature of such allegations are sometimes not easily substantiated to meet the
4 prosecution's burden of proving the case beyond a reasonable doubt. In such
5 cases, the victims of sexual assault are left without protection.

6 C. Orders of protection are a proven deterrent that can protect victims
7 of sexual assault from further victimization. However, many victims are forced
8 to pursue civil orders of protection through ordinary process, often
9 unrepresented, rather than through a shortened summary proceeding.
10 Additionally, victims of sexual assault are not always aware of the vast
11 resources available to assist them in recovering from the trauma associated with
12 being a victim of sexual assault.

13 D. It is the intent of the legislature to provide a civil remedy for victims
14 of sexual assaults of all kinds that will afford the victim immediate and easily
15 accessible protection.

16 §2182. Short title

17 This Chapter shall be known and may be cited as the "Protection for
18 Victims of Sexual Assault Act".

19 §2183. Definitions

20 For purposes of this Chapter:

21 (1)(a) "Nonconsensual contact" means any contact with a victim of
22 sexual assault that is initiated or continued without the victim's consent, that is
23 beyond the scope of the consent provided by the victim, or that is in disregard
24 of the victim's expressed desire that the contact be avoided or discontinued.

25 (b) "Nonconsensual contact" includes, but is not limited to:

26 (i) Abusing, harassing, or interfering with the victim.

27 (ii) Following or appearing within the sight of the victim.

28 (iii) Approaching or confronting the victim in a public place or on
29 private property.

1 (iv) Appearing at the residence of the victim.

2 (v) Entering onto or remaining on property occupied by the victim.

3 (vi) Contacting the victim by telephone.

4 (vii) Sending mail or electronic communications to the victim.

5 (viii) Placing an object on, or delivering an object to, property occupied
6 by the victim.

7 (2) "Sexual assault" includes but is not limited to any act constituting an
8 offense defined as a sex offense in R.S. 15:541(24) and obscenity (R.S. 14:106).

9 §2184. Jurisdiction; venue

10 A. Any district court in the state of Louisiana that is empowered to hear
11 civil matters shall have jurisdiction over proceedings appropriate to it under
12 this Chapter.

13 B. Venue under this Chapter lies:

14 (1) In the parish where the victim resides.

15 (2) In the parish where the defendant resides.

16 (3) In the parish where the sexual assault is alleged to have been
17 committed.

18 §2185. Petition

19 A. A petition filed under the provisions of this Chapter shall contain the
20 following:

21 (1) The name of each petitioner and each person on whose behalf the
22 petition is filed, and the name, address, and parish of residence of each
23 individual alleged to have committed a sexual assault, if known; if the petition
24 is being filed on behalf of a child or person alleged to be incompetent, the
25 relationship between that person and the petitioner.

26 (2) The facts and circumstances concerning the alleged sexual assault.

27 (3) The relationship, if any, between each petitioner and each individual
28 alleged to have committed a sexual assault.

29 (4) A request for one or more protective orders.

1 B. The address and parish of each petitioner and each person on whose
2 behalf the petition is filed may remain confidential with the court.

3 C. If the petition requests the issuance of an ex parte temporary
4 restraining order, the petition shall contain an affidavit signed by each
5 petitioner that the facts and circumstances contained in the petition are true
6 and correct to the best knowledge, information, and belief of petitioner. Any
7 false statement under oath contained in the affidavit shall constitute perjury
8 and shall be punishable by a fine of not more than one thousand dollars, or by
9 imprisonment, with or without hard labor, for not more than five years, or both.

10 D. A petitioner shall not be required to prepay or be cast with court costs
11 or costs of service of a subpoena for the filing of the petition or the issuance of
12 a temporary restraining order or protective order pursuant to this Chapter, and
13 the clerk of court shall immediately file and process the petition and temporary
14 restraining order issued pursuant to this Chapter, regardless of the ability of
15 the petitioner to pay court costs.

16 E. If the court orders the issuance of a temporary restraining order, the
17 defendant may be cast for all costs.

18 §2186. Temporary restraining order

19 A. Upon good cause shown in an ex parte proceeding, the court may
20 enter a temporary restraining order, without bond, as it deems necessary to
21 protect the petitioner, any minor children, or any person alleged to be
22 incompetent, from any nonconsensual contact by the defendant. Any person
23 who demonstrates that the person is or has been a victim of sexual assault shall
24 constitute good cause for purposes of this Subsection. The order may include
25 but is not limited to the following:

26 (1) Directing the defendant to refrain from physically or sexually
27 abusing, harassing, or interfering with the person or the person's employment
28 or going near the residence or place of employment of the petitioner or other
29 person on whose behalf a petition was filed under this Chapter.

1 (2) Awarding to a party use and possession of specified jointly owned or
2 leased property, such as an automobile.

3 (3) Granting possession to the petitioner of the residence or household
4 to the exclusion of the defendant, by evicting the defendant or restoring
5 possession to the petitioner where either:

6 (a) The residence is jointly owned in equal proportion or leased by the
7 defendant and the petitioner or the person on whose behalf the petition is
8 brought.

9 (b) The residence is solely owned by the petitioner or the person on
10 whose behalf the petition is brought.

11 B. If a temporary restraining order is granted without notice, the matter
12 shall be set within twenty-one days for a rule to show cause why the protective
13 order should not be issued, at which time the petitioner must prove the
14 allegations of sexual assault by a preponderance of the evidence. The defendant
15 shall be given notice of the temporary restraining order and the hearing on the
16 rule to show cause by service of process as required by law within twenty-four
17 hours of the issuance of the order.

18 C. If no temporary restraining order has been granted, the court shall
19 issue a rule to show cause why the protective order should not be issued, and set
20 the rule for hearing on the earliest day that the business of the court will permit,
21 but in any case within ten days from the date of service of the petition, at which
22 time the petitioner must prove the allegations of sexual abuse by a
23 preponderance of the evidence. The defendant shall be given notice by service
24 of process as required by law.

25 D. If the hearing pursuant to Subsection B or C of this Section is
26 continued, the court shall make or extend such temporary restraining orders as
27 it deems necessary. Any continuance of a hearing ordered pursuant to
28 Subsection B or C of this Section shall not exceed fifteen days, unless good cause
29 is shown for further continuance.

1 E. The court may, in its discretion, grant an emergency temporary
2 restraining order outside regular court hours.

3 F. Immediately upon entering a temporary restraining order, the judge
4 shall cause to have prepared a Uniform Abuse Prevention Order, as provided
5 in R.S. 46:2136.2(C), shall sign such order, and shall immediately forward it to
6 the clerk of court for filing on the day that the order is issued.

7 G. The clerk of the issuing court shall transmit the Uniform Abuse
8 Prevention Order to the Judicial Administrator's Office, Louisiana Supreme
9 Court, for entry into the Louisiana Protective Order Registry, as provided in
10 R.S. 46:2136.2(A), by facsimile transmission or direct electronic input as
11 expeditiously as possible, but no later than the end of the next business day after
12 the order is filed with the clerk of court. The clerk of the issuing court shall also
13 send a copy of the Uniform Abuse Prevention Order, as provided in R.S.
14 46:2136.2(C), or any modification thereof, to the chief law enforcement officer
15 of the parish where the person or persons protected by the order reside by
16 facsimile transmission or direct electronic input as expeditiously as possible, but
17 no later than the end of the next business day after the order is filed with the
18 clerk of court. A copy of the Uniform Abuse Prevention Order shall be retained
19 on file in the office of the chief law enforcement officer until otherwise directed
20 by the court.

21 §2187. Sexual Assault Protective Orders

22 A. The court may grant any protective order or approve any consent
23 agreement to prevent any nonconsensual contact of a party, any minor children,
24 or any person alleged to be incompetent, which relief may include but is not
25 limited to granting the relief enumerated in R.S. 46:2186.

26 B. A protective order may be rendered pursuant to this Chapter if the
27 court has jurisdiction over the parties and subject matter and reasonable notice
28 and opportunity to be heard is given to the person against whom the order is
29 sought sufficient to protect that person's right to due process.

1 **C. Any protective order issued within this state or outside this state that**
2 **is consistent with Subsection B of this Section shall be accorded full faith and**
3 **credit by the courts of this state and enforced as if it were the order of the**
4 **enforcing court.**

5 **D.(1) On the motion of any party, the court, after notice to the other**
6 **parties and a hearing, may modify a prior order to exclude any item included**
7 **in the prior order, or to include any item that could have been included in the**
8 **prior order.**

9 **(2) On the motion of any party, after a hearing, the court may modify the**
10 **effective period of a protective order pursuant to Paragraph (F)(2) of this**
11 **Section.**

12 **E. A protective order made under this Chapter shall be served on the**
13 **person to whom the order applies in open court at the close of the hearing, or**
14 **in the same manner as a writ of injunction.**

15 **F.(1) Except as provided in Paragraph (2) of this Subsection, any final**
16 **protective order shall be for a fixed period of time, not to exceed eighteen**
17 **months, and may be extended by the court, after a contradictory hearing, in its**
18 **discretion. Such protective order or extension thereof shall be subject to a**
19 **devolutive appeal only.**

20 **(2)(a) For any protective order granted by the court that directs the**
21 **defendant to refrain from abusing, harassing, or interfering with the person, the**
22 **court may grant the order to be effective for an indefinite period of time as**
23 **provided by the provisions of this Paragraph on its own motion or by motion of**
24 **the petitioner. The indefinite period shall be limited to the portion of the**
25 **protective order that directs the defendant to refrain from abusing, harassing,**
26 **or interfering with the person.**

27 **(b) The hearing for this motion shall be conducted concurrently with the**
28 **hearing for the rule to show cause why the protective order should not be**
29 **issued.**

1 (c) Any motion to modify the indefinite effective period of the protective
2 order as provided in Subparagraph (a) of this Paragraph may be granted only
3 after a good faith effort has been made to provide reasonable notice of the
4 hearing to the victim, the victim's designated agent, or the victim's counsel, and
5 either of the following occur:

6 (i) The victim, the victim's designated agent, or the victim's counsel is
7 present at the hearing or provides written waiver of such appearance.

8 (ii) After a good faith effort has been made to provide reasonable notice
9 of the hearing, the victim could not be located.

10 G. In order to protect the identity and provide for the safety and welfare
11 of victims of sexual assault, notwithstanding any other provision of law to the
12 contrary, no public official, officer, employee, or agency shall publicly disclose
13 the name, address, or identity of a victim who petitions the court for a
14 protective order pursuant to this Section. Any documents related to a
15 protective order sought pursuant to this Section that are accessible by the public
16 shall utilize only initials of the victim and shall be redacted accordingly prior
17 to being made accessible to the public.

18 H. Immediately upon granting a protective order, the judge shall cause
19 to have prepared a Uniform Abuse Prevention Order, as provided in R.S.
20 46:2136.2(C), shall sign such order, and shall immediately forward it to the
21 clerk of court for filing on the day that the order is issued.

22 I. The clerk of the issuing court shall transmit the Uniform Abuse
23 Prevention Order to the Judicial Administrator's Office, Louisiana Supreme
24 Court, for entry into the Louisiana Protective Order Registry, as provided in
25 R.S. 46:2136.2(A), by facsimile transmission or direct electronic input as
26 expeditiously as possible, but no later than the end of the next business day after
27 the order is filed with the clerk of court. The clerk of the issuing court shall also
28 send a copy of the Uniform Abuse Prevention Order, as provided in R.S.
29 46:2136.2(C), or any modification thereof, to the chief law enforcement officer

1 of the parish where the person or persons protected by the order reside by
2 facsimile transmission or direct electronic input as expeditiously as possible, but
3 no later than the end of the next business day after the order is filed with the
4 clerk of court. A copy of the Uniform Abuse Prevention Order shall be retained
5 on file in the office of the chief law enforcement officer until otherwise directed
6 by the court.

7 J. In conjunction with any protective order entered by the court
8 pursuant to this Section, the court may also award the victim, to be paid by the
9 defendant:

10 (1) Any court costs, attorney fees, costs of enforcement and modification
11 proceedings, costs of appeals, evaluation fees, and expert witness fees incurred
12 in maintaining or defending any proceeding concerning protecting victims of
13 sexual assault.

14 (2) Costs of medical and psychological care and relocation expenses
15 arising out of the sexual assault as established at any hearing conducted
16 pursuant to this Section.

17 §2188. Penalties; notice of penalty in order

18 A.(1) Upon violation of a temporary restraining order or a protective
19 order issued pursuant to this Chapter, the court may hold the defendant in
20 contempt of court and punish the defendant by imprisonment in the parish jail
21 for not more than six months or a fine of not more than five hundred dollars,
22 or both, and may order that all or a part of any fine be forwarded for the
23 support of the petitioner, in the discretion of the court. Such sentence shall be
24 imposed only after trial by the judge of a rule against the defendant to show
25 cause why he should not be adjudged guilty of contempt and punished
26 accordingly.

27 (2) The rule to show cause may issue on the court's own motion, or on
28 motion of a party to the action or proceeding, and shall state the facts alleged
29 to constitute the contempt. A certified copy of the motion, and of the rule to

1 show cause, shall be served upon the person charged with contempt in the same
2 manner as a subpoena, at least forty-eight hours before the time assigned for the
3 trial of the rule, which shall be scheduled within twenty days of the filing of the
4 motion for contempt.

5 B. Each protective order issued under this Part, including a temporary
6 ex parte order, shall have the following statement printed in bold-faced type or
7 in capital letters:

8 "A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED
9 FOR CONTEMPT OF COURT BY A FINE OF NOT MORE THAN
10 \$500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX
11 MONTHS, OR BOTH, AND MAY BE FURTHER PUNISHED UNDER
12 THE CRIMINAL LAWS OF THE STATE OF LOUISIANA. THIS
13 ORDER SHALL BE ENFORCED BY ALL LAW ENFORCEMENT
14 OFFICERS AND COURTS OF THE STATE OF LOUISIANA."

15 C. Nothing contained herein shall be construed as a limitation on any
16 applicable provisions of the Louisiana Criminal Code.

17 §2189. Assistance; clerk of court; sexual assault advocate

18 A. The clerk of court shall make forms available for making application
19 for protective orders under this Chapter, provide clerical assistance to the
20 petitioner when necessary, advise indigent applicants of the availability of filing
21 in forma pauperis, provide the necessary forms, as supplied by the judicial
22 administrator's office, Louisiana Supreme Court, and provide the services of a
23 notary, where available, for completion of the affidavit required in R.S.
24 46:2185(C).

25 B. Sexual assault advocates may provide clerical assistance to petitioners
26 in making an application for a protective order in accordance with this Chapter.

27 C. For purposes of this Section, "sexual assault advocate" means a
28 person who is engaged in any office, center, or institution referred to as a sexual
29 assault or rape crisis center or similar, and who has undergone at least forty

1 hours of training and who is engaged in rendering advice, counseling, advocacy,
2 or assistance to victims.

3 §2190. Privileged communications and records

4 A. For purposes of this Section:

5 (1) "Privileged communication" means a communication made to a
6 representative or employee of a sexual assault center by a victim. It also means
7 a communication not otherwise privileged made by a representative or
8 employee of a sexual assault center to a victim in the course of rendering
9 services authorized by R.S. 46:2189.

10 (2) "Sexual assault center" means a program established and accredited
11 in accordance with the standards set by the Louisiana Foundation Against
12 Sexual Assault.

13 (3) "Victim" means a person against whom an act of attempted or
14 perpetrated sexual assault was committed.

15 B. Notwithstanding any other provision of law, no person shall be
16 required to disclose, by way of testimony or otherwise, a privileged
17 communication, or to produce any records, documentary evidence, opinions, or
18 decisions relating to such privileged communication, in connection with any
19 civil or criminal proceeding.

20 C. Records relating to a privileged communication maintained by a
21 sexual assault center shall not be public records, but such records may be used
22 for the compilation of statistical data if the identity of the victim and the
23 contents of any privileged communication are not disclosed.

24 §2191. Other relief not affected

25 The granting of any relief authorized under this Chapter shall not
26 preclude any other relief authorized by law.

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

DIGEST

SB 36 Engrossed

2015 Regular Session

Amedee

Proposed law creates and provides relative to the sexual assault protective order (SAPO).

Proposed law declares the legislative purpose and intent behind the creation of the SAPO and provides that it is the intent of the legislature to provide a civil remedy for victims of sexual assaults of all kinds that will afford the victim immediate and easily accessible protection.

Proposed law is to be known and may be cited as the "Protection for Victims of Sexual Assault Act".

Proposed law provides the following definitions:

- (1) "Nonconsensual contact" means any contact with a victim of sexual assault that is initiated or continued without the victim's consent, that is beyond the scope of the consent provided by the victim, or that is in disregard of the victim's expressed desire that the contact be avoided or discontinued. "Nonconsensual contact" includes, but is not limited to:
 - (a) Abusing, harassing, or interfering with the victim.
 - (b) Following or appearing within the sight of the victim.
 - (c) Approaching or confronting the victim in a public place or on private property.
 - (d) Appearing at the residence of the victim.
 - (e) Entering onto or remaining on property occupied by the victim.
 - (f) Contacting the victim by telephone.
 - (g) Sending mail or electronic communications to the victim.
 - (h) Placing an object on, or delivering an object to, property occupied by the victim.
- (2) "Sexual assault" includes but is not limited to any act constituting an offense defined as a sex offense by present law and the present law crime of obscenity.

Proposed law provides that any district court in the state that is empowered to hear civil matters has jurisdiction over proceedings appropriate to it under proposed law.

Proposed law provides that venue under proposed law lies either in the parish where the victim resides, the parish where the defendant resides, or the parish where the sexual assault is alleged to have been committed.

Proposed law provides that a petition filed under the provisions of proposed law must contain the following:

- (1) The name of each petitioner and each person on whose behalf the petition is filed,

and the name, address, and parish of residence of each individual alleged to have committed a sexual assault, if known. If the petition is being filed on behalf of a child or person alleged to be incompetent, the petition must also include the relationship between that person and the petitioner.

- (2) The facts and circumstances concerning the alleged sexual assault.
- (3) The relationship, if any, between each petitioner and each individual alleged to have committed a sexual assault.
- (4) A request for one or more protective orders.

Proposed law provides that the address and parish of each petitioner and each person on whose behalf the petition is filed may remain confidential with the court.

Proposed law provides that if the petition requests the issuance of an ex parte temporary restraining order (TRO), the petition must contain an affidavit signed by each petitioner that the facts and circumstances contained in the petition are true and correct to the best knowledge, information, and belief of petitioner. Proposed law further provides that any false statement under oath contained in the affidavit constitutes perjury and is punishable by a fine of not more than \$1,000, or by imprisonment, with or without hard labor, for not more than five years, or both.

Proposed law provides that a petitioner is not required to prepay or be cast with court costs or costs of service of a subpoena for the filing of the petition or the issuance of a temporary restraining order or protective order pursuant to proposed law, and the clerk of court is to immediately file and process the petition and temporary restraining order issued pursuant to proposed law, regardless of the ability of the petitioner to pay court costs.

Proposed law provides that if the court orders the issuance of a temporary restraining order, the defendant may be cast for all costs.

Proposed law provides that upon good cause shown in an ex parte proceeding, the court may enter a TRO, without bond, as it deems necessary to protect the petitioner, any minor children, or any person alleged to be incompetent, from any nonconsensual contact by the defendant. Proposed law further provides that any person who demonstrates that the person is or has been a victim of sexual assault constitutes good cause for purposes of proposed law.

Proposed law provides that the TRO may include but is not limited to the following:

- (1) Directing the defendant to refrain from physically or sexually abusing, harassing, or interfering with the person or the person's employment or going near the residence or place of employment of the petitioner or other person on whose behalf a petition was filed.
- (2) Awarding to a party use and possession of specified jointly owned or leased property, such as an automobile.
- (3) Granting possession to the petitioner of the residence or household to the exclusion of the defendant, by evicting the defendant or restoring possession to the petitioner where either:
 - (a) The residence is jointly owned in equal proportion or leased by the defendant and the petitioner or the person on whose behalf the petition is brought.
 - (b) The residence is solely owned by the petitioner or the person on whose behalf the petition is brought.

Proposed law provides that if a TRO is granted without notice, the matter is to be set within 21 days for a rule to show cause why the protective order should not be issued, at which time the petitioner must prove the allegations of sexual assault by a preponderance of the evidence. Proposed law further provides that the defendant must be given notice of the TRO and the hearing on the rule to show cause by service of process as required by law within 24 hours of the issuance of the order.

Proposed law provides that if no TRO has been granted, the court is to issue a rule to show cause why the protective order should not be issued, and set the rule for hearing on the earliest day that the business of the court will permit, but in any case within 10 days from the date of service of the petition, at which time the petitioner must prove the allegations of sexual abuse by a preponderance of the evidence. Proposed law further provides that the defendant must be given notice by service of process as required by law.

Proposed law provides that if the hearing pursuant to proposed law is continued, the court is to make or extend such TRO as it deems necessary, and any such continuance cannot exceed 15 days unless good cause is shown for further continuance.

Proposed law provides that the court may grant an emergency TRO outside regular court hours.

Proposed law authorizes the court to grant a protective order or approve any consent agreement to prevent any nonconsensual contact of a party, any minor children, or any person alleged to be incompetent.

Proposed law provides that the court must render a SAPO if the court has jurisdiction over the parties and subject matter, and reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. Proposed law further provides that any protective order issued within this state or outside this state that is consistent with the provisions of proposed law relative to the SAPO is to be accorded full faith and credit by the courts of this state and enforced as if it were the order of the enforcing court.

Proposed law provides that on the motion of any party, the court, after notice to the other parties and a hearing, may modify a prior SAPO to exclude any item included in the prior order, or to include any item that could have been included in the prior order.

Proposed law provides that on the motion of any party, after a hearing, the court may modify the effective period of a SAPO.

Proposed law provides that a SAPO is to be served on the person to whom the order applies in open court at the close of the hearing, or in the same manner as a writ of injunction.

Proposed law provides that any final SAPO is to be for a fixed period of time, not to exceed 18 months, and may be extended by the court, after a contradictory hearing, in its discretion. However, proposed law provides that for any SAPO granted by the court that directs the defendant to refrain from abusing, harassing, or interfering with the person, the court may grant the order to be effective for an indefinite period of time, on its own motion or by motion of the petitioner. Proposed law further provides that the indefinite period is limited to the portion of the protective order that directs the defendant to refrain from abusing, harassing, or interfering with the person. Proposed law further provides that the hearing for this motion is to be conducted concurrently with the hearing for the rule to show cause why the SAPO should not be issued. Proposed law further provides that any motion to modify the indefinite effective period of the SAPO may be granted only after a good faith effort has been made to provide reasonable notice of the hearing to the victim, the victim's designated agent, or the victim's counsel, and either of the following occur:

- (1) The victim, the victim's designated agent, or the victim's counsel is present at the

hearing or provides written waiver of such appearance.

- (2) After a good faith effort has been made to provide reasonable notice of the hearing, the victim could not be located.

Proposed law provides that a SAPO or an extension of a SAPO is subject to a devolutive appeal only.

Proposed law provides that, notwithstanding any other present law to the contrary, no public official, officer, employee, or agency is allowed to publicly disclose the name, address, or identity of a victim who petitions the court for a SAPO. Proposed law further provides that any documents related to a SAPO that are accessible by the public are to utilize only initials of the victim and must be redacted accordingly prior to being made accessible to the public.

Proposed law provides that in conjunction with any SAPO entered by the court pursuant to present law, the court may also award the victim, to be paid by the defendant:

- (1) Any court costs, attorney fees, costs of enforcement and modification proceedings, costs of appeals, evaluation fees, and expert witness fees incurred in maintaining or defending any proceeding concerning protecting victims of sexual assault.
- (2) Costs of medical and psychological care and relocation expenses arising out of the sexual assault as established at any hearing conducted pursuant to proposed law.

Proposed law provides that immediately upon entering a TRO or SAPO, including a SAPO issued as part of bail restrictions, the judge is to cause to have prepared a Uniform Abuse Prevention Order, as provided in present law and is to sign such order, and immediately forward it to the clerk of court for filing on the day that the order is issued. Proposed law further provides that the clerk of the issuing court is to transmit the Uniform Abuse Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court, for entry into the La. Protective Order Registry, 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 further provides that the clerk of the issuing court is to also send a copy of the Uniform Abuse Prevention Order or any modification thereof 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 further provides that a copy of the Uniform Abuse Prevention Order is to be retained on file in the office of the chief law enforcement officer until otherwise directed by the court.

Proposed law provides that upon violation of a TRO or SAPO, the court may hold the defendant in contempt of court and punish the defendant by imprisonment in the parish jail for not more than six months, or a fine of not more than \$500, or both, and may order that all or a part of any fine be forwarded for the support of the petitioner. Proposed law further provides that any such sentence is to be imposed only after trial by the judge of a rule against the defendant to show cause why he should not be adjudged guilty of contempt and punished accordingly. Proposed law further provides that the rule to show cause may issue on the court's own motion, or on motion of a party to the action or proceeding, and must state the facts alleged to constitute the contempt. Proposed law further provides that a certified copy of the motion, and of the rule to show cause, are to be served upon the person charged with contempt in the same manner as a subpoena, at least 48 hours before the time assigned for the trial of the rule, which is to be scheduled within 20 days of the filing of the motion for contempt.

Proposed law provides that each protective order issued under proposed law, including a TRO, is to have the following statement printed in bold-faced type or in capital letters:

"A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF NOT MORE THAN \$500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH, AND MAY BE FURTHER PUNISHED UNDER THE CRIMINAL LAWS OF THE STATE OF LOUISIANA. THIS ORDER SHALL BE ENFORCED BY ALL LAW ENFORCEMENT OFFICERS AND COURTS OF THE STATE OF LOUISIANA."

Proposed law provides that nothing contained in proposed law is to be construed as a limitation on any applicable provisions of present law (La. Criminal Code).

Proposed law provides that the clerk of court is to make forms available for making application for protective orders under proposed law, provide clerical assistance to the petitioner when necessary, advise indigent applicants of the availability of filing in forma pauperis, provide the necessary forms, as supplied by the judicial administrator's office, Louisiana Supreme Court, and provide the services of a notary, where available, for completion of the affidavit required by proposed law as part of the petition.

Proposed law provides that sexual assault advocates may provide clerical assistance to petitioners in making an application for a protective order. Proposed law further provides that a "sexual assault advocate" is a person who is engaged in any office, center, or institution referred to as a sexual assault or rape crisis center or similar, and who has undergone at least 40 hours of training and who is engaged in rendering advice, counseling, advocacy, or assistance to victims.

Proposed law provides that, notwithstanding any provision of present law, no person can be required to disclose, by way of testimony or otherwise, a privileged communication, or to produce any records, documentary evidence, opinions, or decisions relating to such privileged communication, in connection with any civil or criminal proceeding. Proposed law further provides that records relating to a privileged communication maintained by a sexual assault center are not public records, but such records may be used for the compilation of statistical data if the identity of the victim and the contents of any privileged communication are not disclosed.

Proposed law provides that:

- (1) "Privileged communication" means a communication made to a representative or employee of a sexual assault center by a victim, or a communication that is not otherwise privileged made by a representative or employee of a sexual assault center to a victim in the course of rendering services authorized by proposed law.
- (2) "Sexual assault center" means a program established and accredited in accordance with the standards set by the La. Foundation Against Sexual Assault.
- (3) "Victim" means a person against whom an act of attempted or perpetrated sexual assault was committed.

Proposed law provides that the granting of any relief authorized under proposed law does not preclude any other relief authorized by present law.

Present law provides 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, all as provided for by present law, the court is to consider whether the defendant poses a threat or danger to the victim. Present law further provides that if the court determines that the defendant poses such a threat or danger, it is to 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.

Proposed law retains present law and adds a prohibition on nonconsensual contact following an alleged sexual assault as defined in proposed law.

Present law provides that the crime of violation of protective orders is the willful disobedience of a preliminary or permanent injunction or protective order issued pursuant to various provisions of present law relative to domestic violence, or the willful disobedience of a TRO or any ex parte protective order issued pursuant to various provisions of present law, if the defendant has been given notice of the TRO or ex parte protective order by service of process as required by present law.

Proposed law retains present law and adds the SAPO to the list of protective orders the violation of which constitutes the crime of violation of protective orders.

Present law provides that law enforcement officers are to use every reasonable means, including but not limited to immediate arrest of the violator, to enforce a preliminary or permanent injunction or protective order obtained pursuant to various provisions of present law, if the defendant has been given notice of the temporary restraining order or ex parte protective order by service of process as required by present law. Present law further provides that law enforcement officers at a minimum are to issue a summons to the person in violation of a TRO, a preliminary or permanent injunction, or a protective order issued pursuant to various provisions of present law.

Proposed law retains present law and adds the SAPO to the list of protective orders that are to be enforced by law enforcement officers.

Present law, regarding bail, requires a judge who issues a protective order pursuant to the criminal law statutes regarding domestic abuse battery or stalking or when the victim is the defendant's family or household member or his dating partner, to include as part of the bail restrictions that the defendant be prohibited from possessing a firearm for the duration of the Uniform Abuse Protective Order.

Proposed law retains present law. Also, adds victims of sexual assault to list of individuals to whom the defendant poses a threat or danger when the court is considering bail and changes from requiring to allowing the prohibition of possession of firearms as a bail restriction.

Present law provides relative to the La. Protective Order Registry.

Proposed law retains present law and makes the provisions of present law applicable to the SAPO.

Effective August 1, 2015.

(Amends C.Cr.P. Art. 327.1 and 335.1(A)(1)(a) and (c), R.S. 14:79(A)(1)(a) and (E), and R.S. 46:2136.2(A) and (B); adds R.S. 46:2181-2191)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary B to the original bill

1. Removes proposed law definition of "victim of sexual assault".
2. Limits jurisdiction for SAPO in proposed law to district courts.

3. Changes proposed law to allow, rather than require, the address and parish of petitioners for SAPO to remain confidential with the court.
4. Add minor children and persons alleged to be incompetent to individuals who may apply for SAPO.
5. Limits fees and costs that may be assessed by the court against the defendant to those incurred in maintaining or defending any proceeding concerning protecting victims of sexual assault.
6. Adds relocation expenses to the costs that may be assessed by the court against the defendant.
7. Adds provision regarding bail restrictions.