

2017 Regular Session

HOUSE BILL NO. 509

BY REPRESENTATIVE SCHRODER

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

FAMILY VIOLENCE: Provides relative to temporary restraining orders

1 AN ACT

2 To amend and reenact R.S. 14:79(A)(1)(a), (B), and (C) and Code of Criminal Procedure
3 Article 320(G), relative to the issuance and violation of protective orders; to provide
4 for penalties for violations of temporary restraining orders; to provide relative to the
5 issuance of protective orders and the prohibition on communication and contact as
6 conditions of release on bail for certain offenses; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 14:79(A)(1)(a), (B), and (C) are hereby amended and reenacted to
9 read as follows:

10 §79. Violation of protective orders

11 A.(1)(a) Violation of protective orders is the willful disobedience of a
12 preliminary or permanent injunction or protective order issued pursuant to R.S. 9:361
13 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., R.S.
14 46:2181 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure
15 Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 320, ~~327.1~~, ~~335.1~~,
16 ~~335.2~~, and 871.1 after a contradictory court hearing, or the willful disobedience of
17 a temporary restraining order or any ex parte protective order issued pursuant to R.S.
18 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq.,
19 criminal stay-away orders as provided for in Code of Criminal Procedure Articles
20 320, ~~327.1~~, ~~335.1~~, ~~335.2~~, Children's Code Article 1564 et seq., or Code of Civil

1 Procedure Articles 3604 and 3607.1, if the defendant has been given notice of the
2 temporary restraining order or ex parte protective order by service of process as
3 required by law.

4 * * *

5 B.(1) On a first conviction for violation of protective orders which does not
6 involve a battery or any crime of violence as defined by R.S. 14:2(B) against the
7 person protected by the protective order, the offender shall be fined not more than
8 five hundred dollars or imprisoned for not more than six months, or both.

9 ~~(2) On a second conviction for violation of protective orders which does not~~
10 ~~involve a battery or any crime of violence as defined by R.S. 14:2(B) against the~~
11 ~~person protected by the protective order, regardless of whether the second offense~~
12 ~~occurred before or after the first conviction, the offender shall be fined not more than~~
13 ~~one thousand dollars and imprisoned for not less than forty-eight hours nor more~~
14 ~~than six months. At least forty-eight hours of the sentence of imprisonment imposed~~
15 ~~under this Paragraph shall be without benefit of probation, parole, or suspension of~~
16 ~~sentence. If a portion of the sentence is imposed with benefit of probation, parole,~~
17 ~~or suspension of sentence, the court shall require the offender to participate in a~~
18 ~~court-monitored domestic abuse intervention program as defined by R.S. 14:35.3.~~

19 ~~(3)~~(2) On a ~~third~~ second or subsequent conviction for violation of protective
20 orders which does not involve a battery or any crime of violence as defined by R.S.
21 14:2(B) against the person protected by the protective order, regardless of whether
22 the current offense occurred before or after the earlier convictions, the offender shall
23 be fined not more than one thousand dollars and imprisoned with or without hard
24 labor for not less than fourteen days nor more than two years. At least fourteen days
25 of the sentence of imprisonment imposed under this Paragraph shall be without
26 benefit of probation, parole, or suspension of sentence. If a portion of the sentence
27 is imposed with benefit of probation, parole, or suspension of sentence, the court
28 shall require the offender to participate in a court-monitored domestic abuse
29 intervention program as defined by R.S. 14:35.3.

1 C.~~(1)~~ Whoever is convicted of the offense of violation of protective orders
2 where the violation involves a battery or any crime of violence as defined by R.S.
3 14:2(B) against the person protected by the protective order, and who has not been
4 convicted of violating a protective order or of an assault or battery upon the person
5 protected by the protective order within the five years prior to commission of the
6 instant offense, shall be fined not more than five hundred dollars and imprisoned for
7 not less than fourteen days nor more than six months. At least fourteen days of the
8 sentence of imprisonment imposed under this Paragraph shall be without benefit of
9 probation, parole, or suspension of sentence. If a portion of the sentence is imposed
10 with benefit of probation, parole, or suspension of sentence, the court shall require
11 the offender to participate in a court-monitored domestic abuse intervention program
12 as defined by R.S. 14:35.3 as part of that probation.

13 ~~(2)~~(1) Whoever is convicted of the offense of violation of protective orders
14 where the violation involves a battery or any crime of violence as defined by R.S.
15 14:2(B) against the person for whose benefit the protective order is in effect, ~~and~~
16 who has been convicted not more than one time of violating a protective order or of
17 an assault or battery upon the person for whose benefit the protective order is in
18 effect within the five-year period prior to commission of the instant offense,
19 regardless of whether the instant offense occurred before or after the earlier
20 convictions, shall be fined not more than one thousand dollars and imprisoned with
21 or without hard labor for not less than three months nor more than two years. At
22 least thirty days of the sentence of imprisonment imposed under this Paragraph shall
23 be without benefit of probation, parole, or suspension of sentence. If a portion of the
24 sentence is imposed with benefit of probation, parole, or suspension of sentence, the
25 court shall require the offender to participate in a court-monitored domestic abuse
26 intervention program as defined by R.S. 14:35.3.

27 ~~(3)~~(2) Whoever is convicted of the offense of violation of protective orders
28 where the violation involves a battery or any crime of violence as defined by R.S.
29 14:2(B) against the person for whose benefit the protective order is in effect, and

1 who has ~~more than one~~ a conviction of violating a protective order or of an assault
 2 or battery upon the person for whose benefit the protective order is in effect during
 3 the five-year period prior to commission of the instant offense, regardless of whether
 4 the instant offense occurred before or after the earlier convictions, the offender shall
 5 be fined not more than two thousand dollars and imprisoned with or without hard
 6 labor for not less than one year nor more than five years. At least one year of the
 7 sentence of imprisonment imposed under this Paragraph shall be without benefit of
 8 probation, parole, or suspension of sentence.

* * *

10 Section 2. Code of Criminal Procedure Article 320(G) is hereby amended and
 11 reenacted to read as follows:

12 Art. 320. Conditions of bail undertaking

13 * * *

14 G. Domestic offenses, stalking, and sex offenses. (1) In determining
 15 conditions of release of a defendant who is alleged to have committed an offense
 16 against the defendant's family or household member, as defined in R.S. 46:2132(4),
 17 or against the defendant's dating partner, as defined in R.S. 46:2151, or who is
 18 alleged to have committed the offense of domestic abuse battery under the provisions
 19 of R.S. 14:35.3, or who is alleged to have committed the offense of stalking under
 20 the provisions of R.S. 14:40.2, or who is alleged to have committed a sexual assault
 21 as defined in R.S. 46:2184, or who is alleged to have committed the offense of first
 22 degree rape under the provisions of R.S. 14:42, the court shall consider the previous
 23 criminal history of the defendant and whether the defendant poses a threat or danger
 24 to the victim. If the court determines that the defendant poses such a threat or
 25 danger, it shall require as a condition of bail that the defendant refrain from going
 26 to the residence or household of the victim, the victim's school, and the victim's place
 27 of employment or otherwise contacting the victim in any manner whatsoever, and
 28 shall refrain from having any further contact with the victim. The court shall also
 29 consider any statistical evidence prepared by the United States Department of Justice

1 relative to the likelihood of such defendant or any person in general who has raped
2 or molested victims under the age of thirteen years to commit sexual offenses against
3 a victim under the age of thirteen in the future.

4 (2) If the defendant is alleged to have committed any of the offenses
5 included in Paragraph (1) of this Subsection, the court shall require as a condition of
6 bail that the defendant be prohibited from communicating, by electronic
7 communication, in writing, or orally, with a victim of the offense, or with any of the
8 victim's immediate family members, while the case is pending. This condition does
9 not apply if the victim consents in person or through a communication through the
10 local prosecuting agency. If an immediate family member of the victim consents in
11 person or through a communication through the local prosecuting agency, the
12 defendant may contact that person.

13 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 509 Reengrossed 2017 Regular Session Schroder

Abstract: Amends penalties for the crime of violation of protective orders and provides for required conditions of bail for persons alleged to have committed certain offenses.

Present law provides for the crime of violation of protective orders which prohibits any person from willfully disobeying a preliminary or permanent injunction, protective order, or criminal stay-away order issued pursuant to present law. Present law further provides for the following penalties for the offense:

- (1) If the offense does not involve a battery or a crime of violence against the person protected by the order:
 - (a) On a first conviction, the offender shall be fined not more than \$500 or imprisoned for not more than six months, or both.
 - (b) On a second conviction, the offender shall be fined not more than \$1,000 and imprisoned for not less than 48 hours nor more than six months. At least 48 hours of the sentence of imprisonment imposed shall be without benefit of probation, parole, or suspension of sentence.
 - (c) On a third or subsequent conviction, the offender shall be fined not more than \$1,000 and imprisoned with or without hard labor for not less than 14 days nor more than two years. At least 14 days of the sentence of imprisonment

imposed shall be without benefit of probation, parole, or suspension of sentence.

- (2) If the offense involves a battery or a crime of violence against the person protected by the order:
 - (a) If the offender has not been convicted of violating a protective order or of an assault or battery upon the person protected by the protective order within five years prior to the commission of the instant offense, the offender shall be fined not more than \$500 and imprisoned for not less than 14 days nor more than six months. At least 14 days of the sentence of imprisonment imposed shall be without benefit of probation, parole, or suspension of sentence.
 - (b) If the offender has been convicted not more than one time of violating a protective order or of an assault or battery upon the person for whose benefit the protective order is in effect within the five-year period prior to commission of the instant offense, the offender shall be fined not more than \$1,000 and imprisoned with or without hard labor for not less than three months nor more than two years. At least 30 days of the sentence of imprisonment imposed shall be without benefit of probation, parole, or suspension of sentence.
 - (c) If the offender has more than one conviction of violating a protective order or of an assault or battery upon the person for whose benefit the protective order is in effect during the five-year period prior to commission of the instant offense, the offender shall be fined not more than \$2,000 and imprisoned with or without hard labor for not less than one year nor more than five years. At least one year of the sentence of imprisonment imposed shall be without benefit of probation, parole, or suspension of sentence.

Proposed law amends the present law penalties as follows:

- (1) On a first conviction for violation of protective orders which does not involve a battery or any crime of violence against the person protected by the order, the offender shall be fined not more than \$500 or imprisoned for not more than six months, or both.
- (2) On a second or subsequent conviction for violation of protective orders which does not involve a battery or any crime of violence against the person protected by the order, the offender shall be fined not more than \$1,000 and imprisoned with or without hard labor for not less than 14 days nor more than two years. At least 14 days of the sentence of imprisonment imposed shall be without benefit of probation, parole, or suspension of sentence.
- (3) If the offense involves a battery or any crime of violence against the person protected by the order, the offender shall be fined not more than \$1,000 and imprisoned with or without hard labor for not less than three months nor more than two years. At least 30 days of the sentence of imprisonment imposed shall be without benefit of probation, parole, or suspension of sentence.
- (4) If the offense involves a battery or any crime of violence against the person protected by the order and the offender has a conviction of violating a protective order or of an assault or battery upon the person for whose benefit the protective order is in effect during the five-year period prior to commission of the instant offense, the offender shall be fined not more than \$2,000 and imprisoned with or without hard labor for not less than one year nor more than five years. At least one year of the

sentence of imprisonment imposed shall be without benefit of probation, parole, or suspension of sentence.

For a defendant who is alleged to have committed an offense against a family member, household member, or dating partner, or who is alleged to have committed the offense of domestic abuse battery, stalking, first degree rape, or an offense involving sexual assault, present law (C.Cr.P. Art. 320(G)) authorizes the court 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 shall refrain from having any further contact with the victim.

Proposed law retains present law and adds that the court shall require, as a condition of the defendant's release on bail, that the defendant be prohibited from communicating with a victim of the offense, or with any of the victim's immediate family members, while the case is pending.

Proposed law provides that this condition does not apply if the victim consents in person or through a communication through the local prosecuting agency, and further provides that if an immediate family member of the victim consents in person or through a communication through the local prosecuting agency, the defendant may contact that person.

(Amends R.S. 14:79(A)(1)(a), (B), (C) and C.Cr.P. Art. 320(G))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Remove the provisions of proposed law relative to the issuance of temporary restraining orders, protective orders, and the prohibitions on the possession of firearms under the present law Protection from Family Violence Act.
2. Add language that would require as a condition of bail for persons convicted of certain offenses that the defendant be prohibited from communicating with the victim or an immediate family member of the victim.