

Regular Session, 2014

HOUSE BILL NO. 1142

BY REPRESENTATIVE BURRELL

CRIMINAL/BAIL: Provides relative to bail restrictions for offenses against a family or household member or dating partner

1 AN ACT

2 To amend and reenact R.S. 14:79(A)(1)(a) and (E), R.S. 46:2136.2(B), and Code of
3 Criminal Procedure Article 335.1(A)(1), relative to bail; to provide relative to bail
4 restrictions for offenses against a family or household member or dating partner; to
5 provide for the issuance of a Uniform Abuse Prevention Order; to provide relative
6 to the possession of firearms by persons subject to the order; to provide for the
7 inclusion of such orders in the Louisiana Protective Order Registry; and to provide
8 for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Code of Criminal Procedure Article 335.1(A)(1) is hereby amended and
11 reenacted to read as follows:

12 Art. 335.1. Offenses against a family or household member or dating partner;
13 provisions for forfeiture, arrest, modification

14 A.(1)(a) In determining conditions of release of a defendant who is alleged
15 to have committed an offense against the defendant's family or household member,
16 as defined in R.S. 46:2132(4), or against the defendant's dating partner, as defined
17 in R.S. 46:2151, or who is alleged to have committed the offense of domestic abuse
18 battery under the provisions of R.S. 14:35.3, or who is alleged to have committed the
19 offense of stalking under the provisions of R.S. 14:40.2, the court shall consider
20 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 (b) If, as part of a bail restriction, an order is issued pursuant to the
7 provisions of this Paragraph, the judge shall cause to have prepared a Uniform Abuse
8 Prevention Order, as provided in R.S. 46:2136.2, shall sign such order, and shall
9 immediately forward it to the clerk of court for filing, on the day that the order is
10 issued. The clerk of the issuing court shall transmit the Uniform Abuse Prevention
11 Order to the Judicial Administrator's Office, Louisiana Supreme Court, for entry into
12 the Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A), by
13 facsimile transmission or direct electronic input as expeditiously as possible, but no
14 later than the end of the next business day after the order is filed with the clerk of
15 court. The clerk of the issuing court shall also send a copy of the Uniform Abuse
16 Prevention Order, as provided in R.S. 46:2136.2(C), or any modification thereof, to
17 the chief law enforcement officer of the parish where the person or persons protected
18 by the order reside. 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 by
20 the court.

21 (c) If, as part of a bail restriction, an order is issued pursuant to the
22 provisions of this Paragraph, the court shall also order that the defendant be
23 prohibited from possessing a firearm for the duration of the Uniform Abuse
24 Prevention Order. For the purposes of this Paragraph, "firearm" means any pistol,
25 revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon, or
26 assault rifle which is designed to fire or is capable of firing fixed cartridge
27 ammunition or from which a shot or projectile is discharged by an explosive.

28 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

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

3 §79. Violation of protective orders

4 A.(1)(a) Violation of protective orders is the willful disobedience of a
5 preliminary or permanent injunction or protective order issued pursuant to R.S. 9:361
6 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, Children's Code Article 1564
7 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal
8 Procedure Articles 327.1, 335.1, 335.2, and 871.1 after a contradictory court hearing,
9 or the willful disobedience of a temporary restraining order or any ex parte protective
10 order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S.
11 46:2151, criminal stay-away orders as provided for in Code of Criminal Procedure
12 Articles 327.1, ~~and~~ 335.1, 335.2, Children's Code Article 1564 et seq., or Code of
13 Civil Procedure Articles 3604 and 3607.1, if the defendant has been given notice of
14 the temporary restraining order or ex parte protective order by service of process as
15 required by law.

16 * * *

17 E. Law enforcement officers shall use every reasonable means, including but
18 not limited to immediate arrest of the violator, to enforce a preliminary or permanent
19 injunction or protective order obtained pursuant to R.S. 9:361, R.S. 9:372, R.S.
20 46:2131 et seq., R.S. 46:2151, Children's Code Article 1564 et seq., Code of Civil
21 Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 327.1,
22 335.1, 335.2, and 871.1 after a contradictory court hearing, or to enforce a temporary
23 restraining order or ex parte protective order issued pursuant to R.S. 9:361, R.S.
24 9:372, R.S. 46:2131 et seq., R.S. 46:2151, Children's Code Article 1564 et seq., Code
25 of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles
26 327.1 ~~and~~ 335.1, and 335.2 if the defendant has been given notice of the temporary
27 restraining order or ex parte protective order by service of process as required by
28 law.

29 * * *

1 Section 3. R.S. 46:2136.2(B) is hereby amended and reenacted to read as follows:

2 §2136.2. Louisiana Protective Order Registry

3 * * *

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

15 * * *

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)]

Burrell

HB No. 1142

Abstract: Provides relative to the issuance of a Uniform Abuse Prevention Order as a condition of bail for offenses against a family or household member or dating partner and prohibits the possession of firearms by persons subject to such orders.

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, the court shall 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 a threat or danger, it shall 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, and shall refrain from having any further contact with the victim.

Proposed law retains present law and provides for the following:

- (1) If the judge orders the defendant to refrain from going to the residence, school, or place of employment of the victim, or otherwise contacting the victim pursuant to the provisions of present law, the judge shall cause to have prepared a Uniform

Abuse Prevention Order, shall sign such order, and shall immediately forward it to the clerk of court for filing, on the day that the order is issued.

- (2) The clerk of the issuing court shall transmit the Uniform Abuse Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court, for entry into the Louisiana Protective Order Registry 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.
- (3) The clerk of the issuing court shall 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. A copy of the Uniform Abuse Prevention Order shall be retained on file in the office of the chief law enforcement officer until otherwise directed by the court.
- (4) If, as part of a bail restriction, an order is issued pursuant to the provisions of proposed law, the court shall also order that the defendant be prohibited from possessing a firearm, as defined by proposed law, for the duration of the Uniform Abuse Prevention Order.

Present law provides that in determining conditions of release of a defendant who is alleged to have committed the crime of stalking, the court shall issue a Uniform Abuse Prevention Order if the court determines that the defendant poses a threat or danger to the victim.

Present law provides for the crime of violation of protective orders and provides for the duties of law enforcement relative to the violation of protective orders.

Proposed law adds violations of a protective order issued pursuant to the provisions of proposed law and protective orders issued as a condition of bail for the crime of stalking to the crime of violation of protective orders.

Present law provides for the La. Protective Order Registry which encompasses temporary restraining orders, protective orders, preliminary injunctions, permanent injunctions, and court-approved consent agreements that are issued for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical proximity to, another person to prevent domestic abuse or dating violence.

Proposed law adds a protective order issued pursuant to the provisions of proposed law and orders issued as a condition of bail for the crime of stalking to the list of orders encompassed in the La. Protective Order Registry.

(Amends R.S. 14:79(A)(1)(a) and (E), R.S. 46:2136.2(B), and C.Cr.P. Art. 335.1(A)(1))