

(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)

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

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DIGEST

Present law provides relative to bail.

Proposed law may be cited as and referred to as "Gwen's Law".

Proposed law provides that a contradictory bail hearing must be held prior to setting bail for a person in custody who is charged with a felony offense against the defendant's family or household member or against the defendant's dating partner.

Proposed law provides that the court is to order a contradictory hearing to be held within five days, exclusive of weekends and legal holidays.

Proposed law provides that at the contradictory hearing, the court, in addition to hearing whatever evidence it finds relevant, with the consent of the prosecuting attorney is to perform an ex parte examination of the evidence against the accused.

Proposed law provides that, in addition to the factors listed in present law relative to determining the amount of bail, the court is to take into consideration the previous criminal record of the defendant and any potential threat or danger the defendant poses to the victim, the family of the victim, or to any member of the public, especially children. Proposed law further provides that the court also is to perform a risk assessment that will give ample consideration to risk factors including substance abuse, gun ownership, record of violence, employment status, prior threats with dangerous weapon, threats to kill, forced sex, choking, control of daily activities, threats of suicide, threats to harm children, and any other relevant factors.

Proposed law provides that following the contradictory hearing, upon proof by clear and convincing evidence either that the defendant might flee, or that the defendant poses a threat or danger to the victim, or that the defendant poses an imminent danger to any other person or the community, the judge or magistrate may order the defendant held without bail pending trial.

Proposed law provides that if bail is granted following the contradictory hearing, as a condition of bail the court may require a defendant to wear an electronic monitoring device and to be placed under active electronic monitoring. Proposed law further provides that the conditions of the electronic monitoring are to be determined by the court and may include limitation of the defendant's activities outside the home and curfew. Proposed law further provides that the defendant may be required to pay a reasonable supervision fee to the supervising agency to defray the cost of the required electronic monitoring. Proposed law further provides that a violation of the conditions of bail may be punishable by the forfeiture of bail and the issuance of a bench warrant for the defendant's arrest or remanding of the defendant to custody or a modification of the terms of bail.

Proposed law otherwise retains 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, 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 next business day after 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); adds C.Cr.P. Art. 330.3)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Judiciary C to the reengrossed bill

1. Add provisions relative to contradictory bail hearings for persons charged with certain felony offenses.

2. Change time period for judge to forward protective order to clerk of court from same day to next day after order is issued.
3. Designate proposed law as "Gwen's Law".