

Regular Session, 2012

SENATE BILL NO. 428

BY SENATOR KOSTELKA

SEX OFFENSES. Creates the crime of unlawful presence or contact of a sex offender relative to a former victim. (gov sig)

1 AN ACT

2 To enact R.S. 14:91.9, relative to sexual offenders; to prohibit sex offenders from residing
3 or being physically present within a certain distance of a former victim; to prohibit
4 sex offenders from communicating with a former victim; to provide for penalties; to
5 provide for affirmative defenses; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 14:91.9 is hereby enacted to read as follows:

8 **§91.9. Unlawful presence or contact of a sex offender relative to a former**
9 **victim**

10 **A. It shall be unlawful for any person convicted of a sex offense as**
11 **defined in R.S. 15:541 to engage in any of the following:**

12 **(1) Establish a residence or physically reside within three miles of the**
13 **victim of the offense for which he was convicted.**

14 **(2) Knowingly be physically present within three hundred feet of the**
15 **victim of the offense for which he was convicted.**

16 **(3) Communicate, either by electronic communication, in writing, or**
17 **orally, with the victim of the offense for which he was convicted or an**

1 immediate family member of the victim, unless the victim consents to such
2 communication in writing and the communication is made pursuant to the
3 provisions of R.S. 46:1846.

4 B. For purposes of this Section, "immediate family member" means the
5 spouse, mother, father, aunt, uncle, sibling, or child of the victim, whether
6 related by blood, marriage, or adoption.

7 C.(1) Whoever violates the provisions of Paragraphs (A)(1) or (2) of this
8 Section shall be fined not more than one thousand dollars, imprisoned with or
9 without hard labor for not more than one year, or both.

10 (2) Whoever violates the provisions of Paragraph (A)(3) of this Section
11 shall be fined not more than five hundred dollars, imprisoned for not more than
12 six months, or both.

13 D.(1)(a) It shall be an affirmative defense to prosecution for a violation
14 of Paragraph (A)(1) of this Section if the property where the offender resides
15 was occupied by the offender prior to the date on which the victim began
16 residing within three miles of the residence of the offender.

17 (b) The affirmative defense provided in Subparagraph (1)(a) of this
18 Subsection shall not be available to an offender who pleads guilty to or is
19 convicted of a subsequent sex offense as defined in R.S. 15:541 against the same
20 victim after the victim began residing within three miles of the residence of the
21 offender.

22 (2)(a) It shall be an affirmative defense to prosecution for a violation of
23 Paragraph (A)(1) of this Section if the property where the offender resides was
24 occupied by the offender prior to August 1, 2012.

25 (b) The affirmative defense provided in Subparagraph (2)(a) of this
26 Subsection shall not be available to an offender who pleads guilty to or is
27 convicted of a subsequent sex offense as defined in R.S. 15:541 against the same
28 victim after August 1, 2012.

29 Section 2. This Act shall become effective upon signature by the governor or, if not

1 signed by the governor, upon expiration of the time for bills to become law without signature
2 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
3 vetoed by the governor and subsequently approved by the legislature, this Act shall become
4 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Alden A. Clement, Jr.

DIGEST

Proposed law prohibits a sex offender from engaging in any of the following:

1. Establishing a residence or physically residing within three miles of the victim of the offense for which he was convicted.
2. Be physically present within 300 feet of the victim of the offense for which he was convicted.
3. Communicating with the victim of the offense for which he was convicted or an immediate family member of the victim, unless the victim consents to such communication in writing.

Proposed law defines "immediate family member" as the spouse, mother, father, aunt, uncle, sibling, or child of the victim, whether related by blood, marriage, or adoption.

Proposed law provides for the following penalties:

1. Whoever violates the provisions of Paragraphs (1) and (2) of proposed law is to be fined not more than \$1,000, imprisoned for not more than one year, or both.
2. Whoever violates the provisions of Paragraph (3) of proposed law is to be fined not more than \$500, imprisoned for not more than six months, or both.

Provides for the following affirmative defenses to prosecution for a violation of proposed law:

1. If the property where the offender resides was occupied by the offender prior to the date on which his victim began residing within three miles of the residence of the offender, unless the offender pleads guilty to or is convicted of a subsequent sex offense against the same victim after the victim began residing within three miles of the offender.
2. If the property where the offender resides was occupied by the offender prior to 8/1/12, unless the offender pleads guilty to or is convicted of a subsequent sex offense against the same victim after 8/1/12.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 14:91.9)