

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





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.