

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

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AN ACT

To amend and reenact R.S. 14:79(A)(1)(a), (B), and (C), R.S. 46:2135(A)(1) and (B), 2136(F)(2)(a), and 2136.3(A)(introductory paragraph) and (1), relative to the issuance and violation of protective orders, to provide relative to temporary restraining orders; to provide relative to prohibited conduct; to provide for rule to show cause; to provide for penalties for violations of temporary restraining orders; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 46:2135(A)(1) and (B), 2136(F)(2)(a), and 2136.3(A)(introductory paragraph) and (1) are hereby amended and reenacted to read as follows:

§2135. Temporary restraining order

A. Upon good cause shown in an ex parte proceeding, the court may enter a temporary restraining order, without bond, as it deems necessary to protect from abuse the petitioner, any minor children, or any person alleged to be an incompetent. Any person who shows immediate and present danger of abuse shall constitute good cause for purposes of this Subsection. The court shall consider any and all past history of abuse, or threats thereof, in determining the existence of an immediate and present danger of abuse. There is no requirement that the abuse itself be recent, immediate, or present. The order may include but is not limited to the following:

1 (1) Directing the defendant, personally or through third parties, to refrain
2 from abusing, harassing, or interfering with the person or employment or going near
3 the residence, school, or place of employment of the petitioner, the minor children,
4 or any person alleged to be incompetent, on whose behalf a petition was filed under
5 this Part.

6 * * *

7 B.(1) If a temporary restraining order is granted without notice, the matter
8 shall be set within twenty-one days for a rule to show cause why the protective order
9 should not be issued, at which time the petitioner must prove the allegations of abuse
10 by a preponderance of the evidence. The defendant shall be given notice of the
11 temporary restraining order and the hearing on the rule to show cause by service of
12 process as required by law within twenty-four hours of the issuance of the order.

13 (2) If a temporary restraining order is granted without notice and children are
14 temporarily awarded to the person granted the temporary restraining order, the
15 defendant may request a rule to show cause why the protective order shall not be
16 issued within ten days of being given notice of the temporary restraining order and
17 the hearing on the rule to show cause or removal of the children, whichever comes
18 first, and the court shall set the rule for a hearing on the earliest day that the business
19 of the court will permit, but in any case, within ten days from defendant's request for
20 the rule to show cause.

21 * * *

22 §2136. Protective orders; content; modification; service

23 * * *

24 F.

25 * * *

26 (2)(a) For any protective order granted by the court which directs the
27 defendant, personally or through third parties, to refrain from abusing, harassing, or
28 interfering with the person as provided in R.S. 46:2135(A)(1), the court may grant
29 the order to be effective for an indefinite period of time as provided by the provisions

1 of this Paragraph on its own motion or by motion of the petitioner. The indefinite
2 period shall be limited to the portion of the protective order which directs the
3 defendant to refrain from abusing, harassing, or interfering with the person as
4 provided in R.S. 46:2135(A)(1).

5 * * *

6 §2136.3. Prohibition on the possession of firearms by a person against whom a
7 protective order is issued

8 A. Any person against whom the court has issued a permanent injunction or
9 a protective order pursuant to a court-approved consent agreement stipulation or
10 pursuant to the provisions of R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2136, 2151, or
11 2173, Children's Code Article 1570, Code of Civil Procedure Article 3607.1, or Code
12 of Criminal Procedure Articles 30, 320, 327.1, ~~335.1, 335.2~~, or 871.1 shall be
13 prohibited from possessing a firearm for the duration of the injunction or protective
14 order if both of the following occur:

15 (1) The permanent injunction or protective order includes a finding that the
16 person subject to the permanent injunction or protective order represents a credible
17 threat to the physical safety of a family member, ~~or household member,~~ or dating
18 partner.

19 * * *

20 Section 2. R.S. 14:79(A)(1)(a), (B), and (C) are hereby amended and reenacted to
21 read as follows:

22 §79. Violation of protective orders

23 A.(1)(a) Violation of protective orders is the willful disobedience of a
24 preliminary or permanent injunction or protective order issued pursuant to R.S. 9:361
25 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., R.S.
26 46:2181 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure
27 Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 320, 327.1, ~~335.1,~~
28 ~~335.2~~, and 871.1 after a contradictory court hearing, or the willful disobedience of
29 a temporary restraining order or any ex parte protective order issued pursuant to R.S.

1 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq.,
2 criminal stay-away orders as provided for in Code of Criminal Procedure Articles
3 320, 327.1, 335.1, 335.2, Children's Code Article 1564 et seq., or Code of Civil
4 Procedure Articles 3604 and 3607.1, if the defendant has been given notice of the
5 temporary restraining order or ex parte protective order by service of process as
6 required by law.

7 * * *

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

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

22 ~~(3)~~(2) On a ~~third~~ second or subsequent conviction for violation of protective
23 orders which does not involve a battery or any crime of violence as defined by R.S.
24 14:2(B) against the person protected by the protective order, regardless of whether
25 the current offense occurred before or after the earlier convictions, the offender shall
26 be fined not more than one thousand dollars and imprisoned with or without hard
27 labor for not less than fourteen days nor more than two years. At least fourteen days
28 of the sentence of imprisonment imposed under this Paragraph shall be without

1 benefit of probation, parole, or suspension of sentence. If a portion of the sentence
2 is imposed with benefit of probation, parole, or suspension of sentence, the court
3 shall require the offender to participate in a court-monitored domestic abuse
4 intervention program as defined by R.S. 14:35.3.

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

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

Proposed law requires minimum penalties of a \$1,000 fine and at least three months imprisonment for any offense in which the violator commits a crime of violence against the person who is under the protective order.

(Amends R.S. 14:79(A)(1)(a), (B), and (C) and R.S. 46:2135(A)(1) and (B), 2136(F)(2)(a), and 2136.3(A)(intro. para.) and (1))