

2018 Regular Session

HOUSE BILL NO. 896 (Substitute for House Bill No. 81 by Representative Smith)

BY REPRESENTATIVES SMITH AND GLOVER AND SENATORS ALARIO,
BARROW, BISHOP, BOUDREAUX, CARTER, CHABERT, LAFLEUR, MILLS,
MIZELL, PETERSON, PRICE, GARY SMITH, JOHN SMITH, AND THOMPSON

1 AN ACT

2 To amend and reenact R.S. 14:34.9(I), (J), (K), and (L) and 35.3(G)(1), (I), (K), (L), and (M)
3 and R.S. 46:1846(A), (C), and (E) and to enact R.S. 14:2(B)(48), (49), and (50),
4 34.9(M), 35.3(N), and 79(A)(3)(d) and R.S. 46:1846(F), relative to domestic abuse;
5 to provide relative to the crimes of domestic abuse, battery of a dating partner, and
6 violations of protective orders; to provide relative to the penalties for battery of a
7 dating partner and domestic abuse battery when the acts involve burning,
8 strangulation, or a pregnant victim, or are committed near a child who is thirteen
9 years of age or younger; to provide that the crime of battery of a dating partner is a
10 predicate offense for a second or subsequent offense of domestic abuse battery; to
11 add certain violations of domestic abuse battery, battery of a dating partner, and
12 violations of protective orders to the list of crimes of violence; to prohibit persons
13 convicted of certain violations of domestic abuse battery and battery of a dating
14 partner from communicating with the victim or the victim's family member; to
15 provide for the issuance of a Uniform Abuse Prevention Order when certain persons
16 are prohibited from communicating with the victim or the victim's family member;
17 and to provide for related matters.

18 Be it enacted by the Legislature of Louisiana:

19 Section 1. R.S. 14:34.9(I), (J), (K), and (L) and 35.3(G)(1), (I), (K), (L), and (M) are
20 hereby amended and reenacted and R.S. 14:2(B)(48), (49), and (50), 34.9(M), 35.3(N), and
21 79(A)(3)(d) are hereby enacted to read as follows:

1 §2. Definitions

2 * * *

3 B. In this Code, "crime of violence" means an offense that has, as an
4 element, the use, attempted use, or threatened use of physical force against the
5 person or property of another, and that, by its very nature, involves a substantial risk
6 that physical force against the person or property of another may be used in the
7 course of committing the offense or an offense that involves the possession or use
8 of a dangerous weapon. The following enumerated offenses and attempts to commit
9 any of them are included as "crimes of violence":

10 * * *

11 (48) Domestic abuse battery punishable under R.S. 14:35.3(M)(2) or (N).

12 (49) Battery of a dating partner punishable under R.S. 14:34.9(L)(2) or (M).

13 (50) Violation of a protective order if the violation involves a battery or any
14 crime of violence as defined by this Subsection against the person for whose benefit
15 the protective order is in effect.

16 * * *

17 §34.9. Battery of a dating partner

18 * * *

19 I. This Subsection shall be cited as the "Dating Partner Abuse Child
20 Endangerment Law". ~~When~~ Notwithstanding any provision of law to the contrary,
21 when the state proves, in addition to the elements of the crime as set forth in
22 Subsection A of this Section, that a minor child thirteen years of age or younger was
23 present at the residence or any other scene at the time of the commission of the
24 offense, ~~of the sentence imposed by the court, the execution of the minimum~~
25 ~~mandatory sentence provided by Subsection C or D of this Section, as appropriate,~~
26 ~~shall not be suspended, the minimum mandatory sentence imposed under Subsection~~
27 ~~E of this Section shall be two years without suspension of sentence, and the~~
28 ~~minimum mandatory sentence imposed under Subsection F of this Section shall be~~
29 ~~four years without suspension of sentence~~ the offender, in addition to any other

1 penalties imposed pursuant to this Section, shall be imprisoned at hard labor for not
 2 more than three years.

3 J. If Notwithstanding any provision of law to the contrary, if the victim of
 4 the offense is pregnant and the offender knows that the victim is pregnant at the time
 5 of the commission of the offense, the offender, who is sentenced under the
 6 provisions of this Section, shall be required to serve a minimum of forty-five days
 7 without benefit of suspension of sentence for a first conviction, upon a second
 8 conviction shall serve a minimum of one year imprisonment without benefit of
 9 suspension of sentence, upon a third conviction shall serve a minimum of two years
 10 with or without hard labor without benefit of probation, parole, or suspension of
 11 sentence, and upon a fourth and subsequent offense shall serve a minimum of four
 12 years at hard labor without benefit of probation, parole, or suspension of sentence in
 13 addition to any other penalties imposed pursuant to this Section, shall be imprisoned
 14 at hard labor for not more than three years.

15 K. Notwithstanding any ~~other~~ provision of law to the contrary, if the offense
 16 involves strangulation, the offender, in addition to any other penalties imposed
 17 pursuant to this Section, shall be imprisoned at hard labor for not more than three
 18 years.

19 L.(1) Notwithstanding any ~~other~~ provision of law to the contrary, if the
 20 offense is committed by burning, the offender, in addition to any other penalties
 21 imposed pursuant to this Section, shall be imprisoned at hard labor for not more than
 22 three years. ~~that~~

23 (2) If the burning results in serious bodily injury, the offense shall be
 24 classified as a crime of violence, and the offender, in addition to any other penalties
 25 imposed pursuant to this Section, shall be imprisoned at hard labor for not less than
 26 five nor more than fifty years without benefit of probation, parole, or suspension of
 27 sentence.

28 M. Except as provided in Paragraph (L)(2) of this Section, if the offender
 29 intentionally inflicts serious bodily injury, the offender, in addition to any other

1 penalties imposed pursuant to this Section, shall be imprisoned at hard labor for not
2 more than eight years.

3 * * *

4 §35.3. Domestic abuse battery

5 * * *

6 G.(1) For purposes of determining whether an offender has a prior
7 conviction for violation of this Section, a conviction under this Section, or a
8 conviction under the laws of any state or an ordinance of a municipality, town, or
9 similar political subdivision of another state which prohibits the intentional use of
10 force or violence committed by one household member, ~~or family member, or dating~~
11 partner upon another household member, ~~or family member, or dating partner~~ shall
12 constitute a prior conviction.

13 * * *

14 I. This Subsection shall be cited as the "Domestic Abuse Child
15 Endangerment Law". ~~When~~ Notwithstanding any provision of law to the contrary,
16 when the state proves, in addition to the elements of the crime as set forth in
17 Subsection A of this Section, that a minor child thirteen years of age or younger was
18 present at the residence or any other scene at the time of the commission of the
19 offense, ~~of the sentence imposed by the court, the execution of the minimum~~
20 ~~mandatory sentence provided by Subsection C or D of this Section, as appropriate,~~
21 ~~shall not be suspended, the minimum mandatory sentence imposed under Subsection~~
22 ~~E of this Section shall be two years without suspension of sentence, and the~~
23 ~~minimum mandatory sentence imposed under Subsection F of this Section shall be~~
24 ~~four years without suspension of sentence~~ the offender, in addition to any other
25 penalties imposed pursuant to this Section, shall be imprisoned at hard labor for not
26 more than three years.

27 * * *

28 K. ~~If~~ Notwithstanding any provision of law to the contrary, if the victim of
29 domestic abuse battery is pregnant and the offender knows that the victim is pregnant
30 at the time of the commission of the offense, the offender, ~~who is sentenced under~~

1 ~~the provisions of this Section, shall be required to serve a minimum of forty-five~~
 2 ~~days without benefit of suspension of sentence for a first conviction, upon a second~~
 3 ~~conviction shall serve a minimum of one year imprisonment without benefit of~~
 4 ~~suspension of sentence, upon a third conviction shall serve a minimum of two years~~
 5 ~~with or without hard labor without benefit of probation, parole, or suspension of~~
 6 ~~sentence, and upon a fourth and subsequent offense shall serve a minimum of four~~
 7 ~~years at hard labor without benefit of probation, parole, or suspension of sentence in~~
 8 ~~addition to any other penalties imposed pursuant to this Section, shall be imprisoned~~
 9 ~~at hard labor for not more than three years.~~

10 L. Notwithstanding any ~~other~~ provision of law to the contrary, if the
 11 domestic abuse battery involves strangulation, the offender, in addition to any other
 12 penalties imposed pursuant to this Section, shall be imprisoned at hard labor for not
 13 more than three years.

14 M.(1) Notwithstanding any ~~other~~ provision of law to the contrary, if the
 15 domestic abuse battery is committed by burning, the offender, in addition to any
 16 other penalties imposed pursuant to this Section, shall be imprisoned at hard labor
 17 for not more than three years. ~~that~~

18 (2) If the burning results in serious bodily injury, the offense shall be
 19 classified as a crime of violence, and the offender, in addition to any other penalties
 20 imposed pursuant to this Section, shall be imprisoned at hard labor for not less than
 21 five nor more than fifty years without benefit of probation, parole, or suspension of
 22 sentence.

23 N. Except as provided in Paragraph (M)(2) of this Section, if the offender
 24 intentionally inflicts serious bodily injury, the offender, in addition to any other
 25 penalties imposed pursuant to this Section, shall be imprisoned at hard labor for not
 26 more than eight years.

* * *

28 §79. Violation of protective orders

29 A.

* * *

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

1 (3) Violation of protective orders shall also include the willful disobedience
2 of the following:

3 * * *

4 (d) An order issued pursuant to R.S. 46:1846.

5 * * *

6 Section 2. R.S. 46:1846(A), (C), and (E) are hereby amended and reenacted and R.S.
7 46:1846(F) is hereby enacted to read as follows:

8 §1846. Communication between offender and victim prohibited; exceptions

9 A. A person who has been charged by bill of information or indictment with
10 any crime of violence as defined in R.S. 14:2 or any offense, that is a felony,
11 committed upon a family member, household member, or dating partner, as those
12 terms are defined by R.S. 46:2132, or any immediate family member of such person,
13 shall be prohibited from communicating, either by electronic communication, in
14 writing, or orally, with a victim of the offense, or any of his immediate family
15 members for which the person has been charged or for which disposition of the case
16 is pending.

17 * * *

18 C. A person who has been sentenced for a crime of violence as defined in
19 R.S. 14:2 or any offense, that is a felony, committed upon a family member,
20 household member, or dating partner, as those terms are defined by R.S. 46:2132,
21 or any immediate family member of such person, shall be prohibited from
22 communicating, either by electronic communication, in writing, or orally, with a
23 victim of the offense, or any of his immediate family members, for which the person
24 has been sentenced unless the victim or his immediate family members initiate the
25 communication through the Department of Public Safety and Corrections, and it is
26 agreed that the victim and the offender participate in a formally defined restorative
27 justice program administered through the department.

28 * * *

29 E.(1) When a person is prohibited from communicating with another person
30 pursuant to the provisions of this Section, a judge shall cause to have prepared a

1 Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), to protect, at a
 2 minimum, a victim and the children of the victim, shall sign such order, and shall
 3 immediately forward it to the clerk of court for filing, on the next business day after
 4 the order is issued. The clerk of the issuing court shall transmit the Uniform Abuse
 5 Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court,
 6 for entry into the Louisiana Protective Order Registry, as provided in R.S.
 7 46:2136.2(A), by facsimile transmission or direct electronic input as expeditiously
 8 as possible, but no later than the end of the next business day after the order is filed
 9 with the clerk of court. The clerk of the issuing court shall also send a copy of the
 10 Uniform Abuse Prevention Order, or any modification thereof, to the chief law
 11 enforcement officer of the parish where the person or persons protected by the order
 12 reside. A copy of the Uniform Abuse Prevention Order shall be retained on file in
 13 the office of the chief law enforcement officer until otherwise directed by the court.

14 (2) If an order is issued pursuant to the provisions of this Section, it shall be
 15 presumed that the defendant poses a credible threat to the physical safety of the
 16 person or persons protected by the order, and the court shall order that the defendant
 17 be prohibited from possessing a firearm for the duration of the Uniform Abuse
 18 Prevention Order.

19 F. Whoever violates the provisions of this Section shall be ~~fin~~~~ed not more~~
 20 ~~than five hundred dollars, imprisoned for not more than six months, or both~~ subject
 21 to the provisions of R.S. 14:79.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____