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

DIGEST

SB 36 Original

2015 Regular Session

Amedee

Proposed law creates and provides relative to the sexual assault protective order (SAPO).

Proposed law declares the legislative purpose and intent behind the creation of the SAPO and provides that it is the intent of the legislature to provide a civil remedy for victims of sexual assaults of all kinds that will afford the victim immediate and easily accessible protection.

Proposed law is to be known and may be cited as the "Protection for Victims of Sexual Assault Act".

Proposed law provides the following definitions:

- (1) "Nonconsensual contact" means any contact with a victim of sexual assault that is initiated or continued without the victim's consent, that is beyond the scope of the consent provided by the victim, or that is in disregard of the victim's expressed desire that the contact be avoided or discontinued. "Nonconsensual contact" includes, but is not limited to:
 - (a) Abusing, harassing, or interfering with the victim.
 - (b) Following or appearing within the sight of the victim.
 - (c) Approaching or confronting the victim in a public place or on private property.
 - (d) Appearing at the residence of the victim.
 - (e) Entering onto or remaining on property occupied by the victim.
 - (f) Contacting the victim by telephone.
 - (g) Sending mail or electronic communications to the victim.
 - (h) Placing an object on, or delivering an object to, property occupied by the victim.
- (2) "Sexual assault" includes but is not limited to any act constituting an offense defined as a sex offense by present law and the present law crime of obscenity.
- (3) "Victim of sexual assault" or "victim" means a person who is seeking a SAPO pursuant to proposed law and who establishes, by a preponderance of the evidence at any hearing provided for by proposed law, that the person against whom the protective order is sought has committed a sexual assault against the person seeking the protective order. However,

"victim of sexual assault" or "victim" does not include a person who qualifies for an order of protection pursuant to certain provisions of present law relative to domestic violence.

Proposed law provides that any court in the state that is empowered to hear civil matters has jurisdiction over proceedings appropriate to it under proposed law.

Proposed law provides that venue under proposed law lies either in the parish where the victim resides, the parish where the defendant resides, or the parish where the sexual assault is alleged to have been committed.

Proposed law provides that a petition filed under the provisions of proposed law must contain the following:

- (1) The name of each petitioner and each person on whose behalf the petition is filed, and the name, address, and parish of residence of each individual alleged to have committed a sexual assault, if known. If the petition is being filed on behalf of a child or person alleged to be incompetent, the petition must also include the relationship between that person and the petitioner.
- (2) The facts and circumstances concerning the alleged sexual assault.
- (3) The relationship, if any, between each petitioner and each individual alleged to have committed a sexual assault.
- (4) A request for one or more protective orders.

Proposed law provides that the address and parish of each petitioner and each person on whose behalf the petition is filed must remain confidential with the court.

Proposed law provides that if the petition requests the issuance of an ex parte temporary restraining order (TRO), the petition must contain an affidavit signed by each petitioner that the facts and circumstances contained in the petition are true and correct to the best knowledge, information, and belief of petitioner. Proposed law further provides that any false statement under oath contained in the affidavit constitutes perjury and is punishable by a fine of not more than \$1,000, or by imprisonment, with or without hard labor, for not more than five years, or both.

Proposed law provides that a petitioner is not required to prepay or be cast with court costs or costs of service or subpoena for the filing of the petition or the issuance of a temporary restraining order or protective order pursuant to proposed law, and the clerk of court is to immediately file and process the petition and temporary restraining order issued pursuant to proposed law, regardless of the ability of the petitioner to pay court costs.

Proposed law provides that if the court orders the issuance of a temporary restraining order, the defendant may be cast for all costs.

Proposed law provides that upon good cause shown in an ex parte proceeding, the court may enter a TRO, without bond, as it deems necessary to protect the petitioner, any minor children, or any person alleged to be incompetent, from any nonconsensual contact with or from the defendant. Proposed law further provides that any person who demonstrates, by a preponderance of the evidence, that the person is or has been a victim of sexual assault constitutes good cause for purposes of proposed law.

Proposed law provides that the TRO may include but is not limited to the following:

- (1) Directing the defendant to refrain from physically or sexually abusing, harassing, or interfering with the person or the person's employment or going near the residence or place of employment of the petitioner or other person on whose behalf a petition was filed.
- (2) Awarding to a party use and possession of specified jointly owned or leased property, such as an automobile.
- (3) Granting possession to the petitioner of the residence or household to the exclusion of the defendant, by evicting the defendant or restoring possession to the petitioner where either:
 - (a) The residence is jointly owned in equal proportion or leased by the defendant and the petitioner or the person on whose behalf the petition is brought.
 - (b) The residence is solely owned by the petitioner or the person on whose behalf the petition is brought.

Proposed law provides that if a TRO is granted without notice, the matter is to be set within 21 days for a rule to show cause why the protective order should not be issued, at which time the petitioner must prove the allegations of sexual assault by a preponderance of the evidence. Proposed law further provides that the defendant must be given notice of the TRO and the hearing on the rule to show cause by service of process as required by law within 24 hours of the issuance of the order.

Proposed law provides that if no TRO has been granted, the court is to issue a rule to show cause why the protective order should not be issued, and set the rule for hearing on the earliest day that the business of the court will permit, but in any case within 10 days from the date of service of the petition, at which time the petitioner must prove the allegations of sexual abuse by a preponderance of the evidence. Proposed law further provides that the defendant must be given notice by service of process as required by law.

Proposed law provides that if the hearing pursuant to proposed law is continued, the court is to make or extend such TRO as it deems necessary, and any such continuance cannot exceed 15 days unless good cause is shown for further continuance.

Proposed law provides that the court may grant an emergency TRO outside regular court hours.

Proposed law provides that the initial rule to show cause hearing may be conducted by a hearing

officer who is qualified and selected in the same manner provided in present law and who is subject to the applicable limitations and must follow the applicable procedures provided in present law. Proposed law further provides that the hearing officer is to make recommendations to the court as to the action that should be taken in the matter.

Proposed law provides that a victim of sexual assault may petition the court for a protective order to prevent any nonconsensual contact.

Proposed law provides that the court must render a SAPO if the court has jurisdiction over the parties and subject matter, and reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. Proposed law further provides that any protective order issued within this state or outside this state that is consistent with the provisions of proposed law relative to the SAPO is to be accorded full faith and credit by the courts of this state and enforced as if it were the order of the enforcing court.

Proposed law provides that on the motion of any party, the court, after notice to the other parties and a hearing, may modify a prior SAPO to exclude any item included in the prior order, or to include any item that could have been included in the prior order.

Proposed law provides that on the motion of any party, after a hearing, the court may modify the effective period of a SAPO.

Proposed law provides that a SAPO is to be served on the person to whom the order applies in open court at the close of the hearing, or in the same manner as a writ of injunction.

Proposed law provides that any final SAPO is to be for a fixed period of time, not to exceed 18 months, and may be extended by the court, after a contradictory hearing, in its discretion. However, proposed law provides that for any SAPO granted by the court that directs the defendant to refrain from abusing, harassing, or interfering with the person, the court may grant the order to be effective for an indefinite period of time, on its own motion or by motion of the petitioner. Proposed law further provides that the indefinite period is limited to the portion of the protective order that directs the defendant to refrain from abusing, harassing, or interfering with the person. Proposed law further provides that the hearing for this motion is to be conducted concurrently with the hearing for the rule to show cause why the SAPO should not be issued. Proposed law further provides that any motion to modify the indefinite effective period of the SAPO may be granted only after a good faith effort has been made to provide reasonable notice of the hearing to the victim, the victim's designated agent, or the victim's counsel, and either of the following occur:

- (1) The victim, the victim's designated agent, or the victim's counsel is present at the hearing or provides written waiver of such appearance.
- (2) After a good faith effort has been made to provide reasonable notice of the hearing, the victim could not be located.

Proposed law provides that a SAPO or an extension of a SAPO is subject to a devolutive appeal

only.

Proposed law provides that, notwithstanding any other present law to the contrary, no public official, officer, employee, or agency is allowed to publicly disclose the name, address, or identity of a victim who petitions the court for a SAPO. Proposed law further provides that any documents related to a SAPO that are accessible by the public are to utilize only initials of the victim and must be redacted accordingly prior to being made accessible to the public.

Proposed law provides that in conjunction with any SAPO entered by the court pursuant to present law, the court may also award the victim, to be paid by the defendant:

- (1) Any court costs, attorney fees, costs of enforcement and modification proceedings, costs of appeals, evaluation fees, and expert witness fees.
- (2) Costs of medical and psychological care arising out of the sexual assault as established at any hearing conducted pursuant to proposed law.

Proposed law provides that immediately upon entering a TRO or SAPO, including a SAPO issued as part of bail restrictions, the judge is to cause to have prepared a Uniform Abuse Prevention Order, as provided in present law and is to sign such order, and immediately forward it to the clerk of court for filing on the day that the order is issued. Proposed law further provides that the clerk of the issuing court is to transmit the Uniform Abuse Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court, for entry into the La. Protective Order Registry, by facsimile transmission or direct electronic input 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. Proposed law further provides that the clerk of the issuing court is to 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 by facsimile transmission or direct electronic input 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. Proposed law further provides that a copy of the Uniform Abuse Prevention Order is to be retained on file in the office of the chief law enforcement officer until otherwise directed by the court.

Proposed law provides that upon violation of a TRO or SAPO, the court may hold the defendant in contempt of court and punish the defendant by imprisonment in the parish jail for not more than six months, or a fine of not more than \$500, or both, and may order that all or a part of any fine be forwarded for the support of the petitioner. Proposed law further provides that any such sentence is to be imposed only after trial by the judge of a rule against the defendant to show cause why he should not be adjudged guilty of contempt and punished accordingly. Proposed law further provides that the rule to show cause may issue on the court's own motion, or on motion of a party to the action or proceeding, and must state the facts alleged to constitute the contempt. Proposed law further provides that a certified copy of the motion, and of the rule to show cause, are to be served upon the person charged with contempt in the same manner as a subpoena, at least 48 hours before the time assigned for the trial of the rule, which is to be scheduled within 20 days of the filing of the motion for contempt.

Proposed law provides that each protective order issued under proposed law, including a TRO, is to have the following statement printed in bold-faced type or in capital letters:

"A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF NOT MORE THAN \$500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH, AND MAY BE FURTHER PUNISHED UNDER THE CRIMINAL LAWS OF THE STATE OF LOUISIANA. THIS ORDER SHALL BE ENFORCED BY ALL LAW ENFORCEMENT OFFICERS AND COURTS OF THE STATE OF LOUISIANA."

Proposed law provides that nothing contained in proposed law is to be construed as a limitation on any applicable provisions of present law (La. Criminal Code).

Proposed law provides that the clerk of court is to make forms available for making application for protective orders under proposed law, provide clerical assistance to the petitioner when necessary, advise indigent applicants of the availability of filing in forma pauperis, provide the necessary forms, as supplied by the judicial administrator's office, Louisiana Supreme Court, and provide the services of a notary, where available, for completion of the affidavit required by proposed law as part of the petition.

Proposed law provides that sexual assault advocates may provide clerical assistance to petitioners in making an application for a protective order. Proposed law further provides that a "sexual assault advocate" is a person who is engaged in any office, center, or institution referred to as a sexual assault or rape crisis center or similar, and who has undergone at least 40 hours of training and who is engaged in rendering advice, counseling, advocacy, or assistance to victims.

Proposed law provides that, notwithstanding any provision of present law, no person can be required to disclose, by way of testimony or otherwise, a privileged communication, or to produce any records, documentary evidence, opinions, or decisions relating to such privileged communication, in connection with any civil or criminal proceeding. Proposed law further provides that records relating to a privileged communication maintained by a sexual assault center are not public records, but such records may be used for the compilation of statistical data if the identity of the victim and the contents of any privileged communication are not disclosed.

Proposed law provides that:

- (1) "Privileged communication" means a communication made to a representative or employee of a sexual assault center by a victim, or a communication that is not otherwise privileged made by a representative or employee of a sexual assault center to a victim in the course of rendering services authorized by proposed law.
- (2) "Sexual assault center" means a program established and accredited in accordance with the standards set by the La. Foundation Against Sexual Assault.
- (3) "Victim" means a person who has been a victim of a "sexual assault" as defined by proposed

law.

Proposed law provides that the granting of any relief authorized under proposed law does not preclude any other relief authorized by 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, or against the defendant's dating partner, or who is alleged to have committed the offense of domestic abuse battery, or who is alleged to have committed the offense of stalking, all as provided for by present law, the court is to 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 such a threat or danger, it is 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 refrain from having any further contact with the victim.

Proposed law retains present law and adds a prohibition on nonconsensual contact following an alleged sexual assault as defined in proposed law.

Present law provides that the crime of violation of protective orders is the willful disobedience of a preliminary or permanent injunction or protective order issued pursuant to various provisions of present law relative to domestic violence, or the willful disobedience of a TRO or any ex parte protective order issued pursuant to various provisions of present law, if the defendant has been given notice of the TRO or ex parte protective order by service of process as required by present law.

Proposed law retains present law and adds the SAPO to the list of protective orders the violation of which constitutes the crime of violation of protective orders.

Present law provides that law enforcement officers are to use every reasonable means, including but not limited to immediate arrest of the violator, to enforce a preliminary or permanent injunction or protective order obtained pursuant to various provisions of present law, if the defendant has been given notice of the temporary restraining order or ex parte protective order by service of process as required by present law. Present law further provides that law enforcement officers at a minimum are to issue a summons to the person in violation of a TRO, a preliminary or permanent injunction, or a protective order issued pursuant to various provisions of present law.

Proposed law retains present law and adds the SAPO to the list of protective orders that are to be enforced by law enforcement officers.

Present law provides relative to the La. Protective Order Registry.

Proposed law retains present law and makes the provisions of present law applicable to the SAPO.

Effective August 1, 2015.

(Amends C.Cr.P. Art. 327.1 and 335.1(A)(1)(a), R.S. 14:79(A)(1)(a) and (E), and R.S. 46:2136.2(A)

and (B); adds R.S. 46:2181-2191)