

ACT No. 337

2017 Regular Session

HOUSE BILL NO. 309

BY REPRESENTATIVE MORENO

1 AN ACT

2 To amend and reenact R.S. 15:260 and R.S. 46:1842, 1843, and 1844(A)(2)(b), (L), (M)(1)
3 and (2), and (O) and to enact R.S. 46:1845, relative to rights of crime victims; to
4 provide relative to applicability; to provide relative to a return of property; to provide
5 for notification of pardon or parole; to provide additional rights for victims of sexual
6 assault; to provide for notification of rights; to provide for duties and responsibilities;
7 to provide for a sexual assault advocate; to provide relative to the right to privacy;
8 to provide procedures and requirements; to provide definitions; and to provide for
9 related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 46:1842, 1843, and 1844(A)(2)(b), (L), (M)(1) and (2), and (O) are
12 hereby amended and reenacted and R.S. 46:1845 is hereby enacted to read as follows:

13 §1842. Definitions

14 In this Chapter:

15 (1) "Crime" means an act defined as a felony, misdemeanor, or delinquency
16 under state law.

17 (2) "Crime lab" means a laboratory that conducts a forensic analysis of
18 physical evidence in criminal matters.

19 ~~(1.1)~~(3) "Crime victim who is a minor" means a person under the age of
20 eighteen against whom any of the following offenses have been committed:

21 (a) Any homicide or any felony offense defined or enumerated in R.S.
22 14:2(B).

23 (b) Any ~~sexual~~ sex offense or human trafficking-related offense as defined
24 or enumerated in R.S. 46:1844(W).

1 (c) The offenses of vehicular negligent injuring and first degree vehicular
2 negligent injuring.

3 ~~(2)~~(4) "Critical stage" means any judicial proceeding at which there is a
4 disposition of the charged offense or a lesser offense, or a sentence imposed pursuant
5 thereto.

6 ~~(3)~~(5) "Designated family member" means a family member or legal
7 guardian of the victim who is a minor, a homicide victim, or a victim who is unable
8 to exercise his rights ~~hereunder~~ pursuant to this Chapter due to a serious disability.
9 The designated family member shall be selected by a majority of the victim's family
10 members, and shall be afforded all of the rights accruing to victims under this
11 Chapter. A substitution of the designated family member may be made upon
12 agreement by the majority of the victim's family members. In specific cases, the
13 court or the district attorney may allow more than one designated family member.

14 (6) "Forensic medical examination" has the same meaning as provided in
15 R.S. 15:622.

16 (7) "Healthcare provider" has the same meaning as provided in R.S.
17 40:1216.1.

18 ~~(4)~~(8) "Inmate" means a person convicted of a felony.

19 ~~(5)~~(9) "Judicial agency" means the district court and officers thereof,
20 including the judge, the prosecutor, and the clerk of court, the Crime Victims
21 Reparations Board, the Department of Public Safety and Corrections, and the
22 division of probation and parole.

23 ~~(6)~~(10) "Judicial proceeding" means any contradictory proceeding held in
24 open court.

25 ~~(7)~~(11) "Law enforcement agency" means the sheriff, constable, or police
26 force as defined by law, and the Department of Public Safety and Corrections.

27 ~~(8)~~(12) "Registration" means the completion of a form which is filed with
28 the law enforcement agency investigating the offense of which the person is a victim,
29 as specified in R.S. 46:1844(T), which shall include an address, email address, and
30 telephone number at which the victim or designated family member may be notified.

1 Such forms shall be promulgated by the Louisiana Commission on Law Enforcement
2 and Administration of Criminal Justice in accordance with R.S. 46:1844(R).

3 (13) "Sexual assault advocate" has the same meaning as provided in R.S.
4 46:2186.

5 (14) "Sexual assault collection kit" has the same meaning as provided in
6 R.S. 15:624.

7 ~~(9)~~(15) "Victim" means a person against whom any of the following offenses
8 have been committed:

9 (a) Any homicide, or any felony offense defined or enumerated in R.S.
10 14:2(B).

11 (b) Any ~~sexual~~ sex offense or human trafficking-related offense as defined
12 or enumerated in R.S. 46:1844(W).

13 (c) The offenses of vehicular negligent injuring and first degree vehicular
14 negligent injuring.

15 (d) Any offense against the person as defined in the Criminal Code
16 committed against a family or household member as defined in R.S. 46:2132(4) or
17 dating partner as defined in R.S. 46:2151(B).

18 ~~(10)~~(16) "Victim notice and registration form" means a form promulgated
19 by the Louisiana Commission on Law Enforcement and Administration of Criminal
20 Justice in accordance with R.S. 46:1844(R) and distributed by a judicial or law
21 enforcement agency on which a victim or witness or a family member of a victim or
22 witness may indicate a request that he be afforded the rights prescribed in this
23 Chapter or other criminal statutes relative to a crime of which he or a family member
24 was a victim or witness.

25 (17) "Victim of sexual assault" means any natural person who presents as a
26 victim of sexual assault as defined in R.S. 46:2184, or the family member of such
27 person if the victim is under eighteen years of age, incompetent, or deceased,
28 provided that in no instance does the term include a family member identified as the
29 perpetrator.

1 (~~11~~)(18) "Victim's family" includes a spouse, parent, child, stepchild, sibling,
2 or legal representative of the victim, except when ~~the~~ that person is in custody for an
3 offense ~~or,~~ is the defendant, or has been identified as the perpetrator, regardless of
4 whether the person is in custody.

5 (~~12~~)(19) "Witness" means any person who has been or is expected to testify
6 for the prosecution, or who, by reason of having relevant information, is subject to
7 call or likely to be called as a witness for the prosecution, whether or not any action
8 or proceeding has yet been commenced.

9 §1843. Eligibility of victims

10 Except as provided in R.S. 46:1845, a ~~A~~ victim has the rights and is eligible
11 for the services under this Chapter only if the victim reported the crime to law
12 enforcement authorities within seventy-two hours of its occurrence or discovery,
13 unless extenuating circumstances exist for later reporting.

14 §1844. Basic rights for victim and witness

15 A. Services and information concerning services available to victims and
16 witnesses of a crime.

17 * * *

18 (2) The Department of Public Safety and Corrections shall maintain the
19 Crime Victims Services Bureau presently in operation. The bureau shall publicize
20 and provide a way for crime victims and their family members to be kept informed
21 about the following:

22 * * *

23 (b) ~~Parole board~~ Committee on parole or pardon board hearings or other
24 release hearings.

25 * * *

26 L. Return of property to victim or family of victim. All judicial and law
27 enforcement agencies shall expeditiously return any stolen or other personal property
28 to victims or victims' families when no longer needed as evidence, at no cost to
29 victims or their families.

1 M. Victims' right to seek restitution.

2 (1) If the defendant is found guilty, the court or the committee on parole
3 ~~board~~ shall require the defendant to pay restitution to the appropriate party in an
4 amount and manner determined by the court. In addition, the court or the committee
5 on parole board may require the defendant to perform community service work in
6 an amount and according to a schedule determined by the court.

7 (2) One of the conditions of work release shall be a requirement that an
8 inmate pay from his earnings all restitution ordered by the court or the committee
9 on parole board. Even if no restitution has been ordered, the sheriff or director of the
10 program shall have the right to require payment of restitution as a condition of work
11 release.

12 * * *

13 O. Notification of pardon or parole. The Board of Pardons or the ~~Board of~~
14 ~~Parole~~ committee on parole, respectively, shall notify the victim or the victim's
15 family and all persons who file a victim registration and notification form and the
16 appropriate district attorney that a hearing has been set for the person convicted of
17 the crime ~~against the victim~~. The victim or victim's family shall have the right to
18 make written and oral statements as to the impact of the crime at any hearing before
19 ~~either the board or committee~~ and to rebut any statements or evidence introduced by
20 the inmate or defendant. The victim or the victim's family, a victim advocacy group,
21 and the district attorney or his representative may also appear before ~~either the board~~
22 or committee in person or by means of telephone communication from the office of
23 the local district attorney.

24 * * *

25 §1845. Additional rights for victims of sexual assaults; notification of rights

26 A.(1) The rights provided to victims of sexual assault contained in this
27 Section attach whether a victim seeks the assistance of either a law enforcement
28 official or a healthcare provider. A victim of sexual assault retains all the rights of
29 these provisions regardless of whether the victim receives a forensic medical
30 examination or whether a sexual assault collection kit is administered.

1 (2) Notwithstanding any other provision of law to the contrary, nothing in
2 this Section shall be construed to negate or impair any provision of law relative to
3 the mandatory reporting of crimes against children under the age of eighteen years
4 or to negate or impair the investigation or prosecution of any crime against children
5 under the age of eighteen.

6 B. A victim of sexual assault has the right to be notified of and to request the
7 presence of a sexual assault advocate during the administration of a forensic medical
8 examination or a scheduled interview by a law enforcement official if a sexual
9 assault advocate is reasonably available. Nothing in this Section shall be construed
10 to prohibit the conducting of a forensic medical examination or an interview by a law
11 enforcement official in the absence of a sexual assault advocate.

12 C.(1) The district attorney, prior to trial, shall make reasonable efforts to
13 interview the victim or designated family member to determine the facts of the case
14 and whether the victim or the family is requesting restitution.

15 (2) All law enforcement and judicial agencies shall provide a private setting
16 for conducting all interviews of a victim of sexual assault. "Private setting" shall
17 mean an enclosed room from which the occupants are not visible or otherwise
18 identifiable and whose conversations cannot be heard from outside the room. Only
19 those persons directly and immediately related to the interviewing of the victim,
20 specifically the victim, a social worker, psychologist, or other professional, a victim
21 advocate designated by the sheriff's office or a representative from a not-for-profit
22 victim service organization including but not limited to rape crisis centers, sexual
23 assault centers, domestic violence advocacy groups, and alcohol abuse or substance
24 abuse groups providing emotional support to the victim, shall be present unless the
25 victim requests the exclusion of such person from the interview, and when
26 appropriate, the parent or parents of the victim.

27 (3) The victim of sexual assault and the victim's family may refuse any
28 requests for interviews with the attorney for the defendant or any employee or agent
29 working for the attorney for the defendant. If the victim of sexual assault is a minor,
30 the parent or guardian of the victim may refuse to permit the minor to be interviewed

1 by the attorney for the defendant or any employee or agent working for the attorney
 2 for the defendant. Before any victim of sexual assault may be subpoenaed to testify
 3 on behalf of a defendant at any pretrial hearing, the defendant shall show good cause
 4 at a contradictory hearing with the district attorney why the subpoena should be
 5 issued. Willful disregard of the rights of victims and witnesses as provided in this
 6 Paragraph may be punishable as contempt of court.

7 D. The failure to comply with the provisions of this Section shall not affect
 8 the admissibility of any evidence in a civil or criminal proceeding, nor shall any
 9 sentence, plea, conviction, or other final disposition be invalidated due to the failure
 10 to comply with the provisions of this Section. Nothing in this Section shall be
 11 construed as creating a cause of action by or on behalf of any person for an award
 12 of costs or attorney fees, for the appointment of counsel for a victim, or for any cause
 13 of action for compensation or damages against the state of Louisiana, a political
 14 subdivision, a public agency, or a court, or any officer, employee, or agent thereof.
 15 Nothing in this Section precludes filing for a writ of mandamus as provided in the
 16 Code of Civil Procedure to compel the performance of a ministerial duty required by
 17 law.

18 Section 2. R.S. 15:260 is hereby amended and reenacted to read as follows:

19 §260. Production of certain records of a victim ~~under age eighteen~~; conditions

20 A. If the defendant is charged with a violation of R.S. 14:93 or any provision
 21 of Subpart C of Part II, Subpart B of Part IV, or Subpart A(1) or A(4) of Part V of
 22 Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950, and the victim was
 23 under the age of eighteen at the time of the offense, R.S. 14:93.2.3, or sex offense or
 24 human trafficking-related offense as defined in or enumerated in R.S. 46:1844(W),
 25 a subpoena or court order compelling the production of medical, psychological,
 26 school, or other records pertaining to the victim shall not be issued upon request of
 27 the defendant unless the subpoena or court order identifies the records sought with
 28 particularity and is reasonably limited as to subject matter, and the court finds, after
 29 a contradictory hearing with the state, that the requested records are likely to be

1 relevant and admissible at trial and are not sought for the purpose of harassing the
2 victim.

3 B. Any records obtained by the defendant or his attorney without full
4 compliance with the provisions of this Section shall be inadmissible in any criminal
5 proceeding.

6 C. The district attorney shall provide written notice to the victim, or counsel
7 for the victim if applicable, of the contradictory hearing required by the provisions
8 of this Section.

9 D. Willful violation of the provisions of this Section may be punishable as
10 contempt of court.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____