

2019 Regular Session

SENATE BILL NO. 146

BY SENATORS MORRELL, BISHOP AND CARTER AND REPRESENTATIVES
JIMMY HARRIS, JAMES AND LEGER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

DOMESTIC VIOLENCE. Limits the incarceration of victims of domestic violence and sex offenses who refuse to testify against their abusers. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 15:257 and to enact R.S. 15:257.1 and 625, relative to

3 compulsory process; to provide limitations of arrest and incarceration of victims of

4 domestic violence and sexually oriented criminal offenses who refuse to testify

5 against their abusers; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 15:257 is hereby amended and reenacted and R.S. 15:257.1 and 625

8 are hereby enacted to read as follows:

9 §257. Placing material witness under bond; **exception for victims**

10 ~~Whenever~~ **A. Except as provided in R.S. 15:257.1, whenever** it shall

11 appear, upon motion of the district attorney or upon motion of a defendant supported

12 by his affidavit, that the testimony of any witness is essential to the prosecution or

13 the defense, as the case may be, and it is shown that it may become impracticable to

14 secure the presence of the person by subpoena, a judge, as defined in Article 931 of

15 the Code of Criminal Procedure, shall issue a warrant for the arrest of the witness.

16 The witness shall be arrested and held in the parish jail, or such other suitable place

17 as shall be designated by the court, until he gives an appearance bond as provided for

1 defendants when admitted to bail, or until his testimony shall have been given in the
2 cause or dispensed with.

3 **§257.1. Exception for material witness warrants for victims of sex offenses and**
4 **intimate partner violence; legislative intent**

5 **A. The legislature hereby finds and declares that domestic violence and**
6 **sexual assault are major public health problems and violations of human rights.**
7 **The legislature further finds that in order to be in compliance with the Violence**
8 **Against Women Act, this statute is meant to discourage the use of material**
9 **witness warrants and enforce the premise that the use of material witness**
10 **warrants for victims of intimate partner violence or sex crimes is an**
11 **extraordinary measure that should only be used when absolutely necessary and**
12 **that any incarceration shall only occur after all other remedies have been**
13 **exhausted in order to prevent further victimization and trauma to the victims.**

14 **B. A judge shall not order a material witness warrant to secure the**
15 **presence of a victim listed in the indictment or bill of information in a**
16 **misdemeanor prosecution in cases where the instituted charges are one of a sex**
17 **offense under R.S. 15:541 or a listed victim in the indictment or bill of**
18 **information of a misdemeanor offense committed under R.S. 14:34.9 (Battery**
19 **of a Dating Partner) or R.S. 14:35.3 (Domestic Abuse Battery) that is a pending**
20 **matter before a court.**

21 **C.(1) A judge shall not order a material witness warrant to secure the**
22 **presence of a victim listed in the indictment or bill of information in a felony**
23 **prosecution in cases where the instituted charges are either:**

24 **(a) A sex offense under R.S. 15:541.**

25 **(b) A case where the instituted charges are of an offense committed**
26 **under: R.S. 14:34.9 (Battery of a Dating Partner), R.S. 14:35.3 (Domestic Abuse**
27 **Battery), R.S. 14:37.7 (Domestic Abuse Aggravated Assault), R.S. 14:34.9.1**
28 **(Aggravated Assault upon a Dating Partner).**

29 **(c) A case where the victim listed in the indictment or bill of information**

1 of the current felony charge pending before the court is the current or former
2 spouse or the current or former dating partner, regardless of whether or not the
3 individuals reside in the same household that is a pending matter before a court.

4 (2) Notwithstanding Paragraph (1) of this Subsection, a judge may order
5 a material witness warrant to secure the presence of a victim listed in the
6 indictment or bill of information in a felony prosecution if the applicant
7 presents an affidavit to the judge attesting to all of the following:

8 (a) The efforts made by the applicant to secure the witness's appearance
9 in court.

10 (b) That the testimony of the witness is essential to the prosecution or
11 defense of a criminal proceeding.

12 (c) The filing of the affidavit made pursuant to this Section is filed in
13 compliance with R.S. 46:1844(W).

14 D. Appearance of the secured victim after execution of the material
15 witness warrant.

16 (1) When a witness who is a victim of any of the above enumerated
17 offenses is secured pursuant to a material witness warrant issued by a judge,
18 notification shall immediately be made to the judge who signed the warrant and
19 the duty judge or magistrate, as well as the applicant who requested the order.

20 Upon notification that the witness has been secured:

21 (a) Inside of the jurisdiction where the material warrant was issued, the
22 victim shall be brought before a judge on the next scheduled business day.

23 (b) Outside of the jurisdiction in which the warrant was issued, the
24 victim shall be brought before the judge as soon as practically possible.

25 (2) Once the victim is brought before a judge, the judge shall explore all
26 available alternatives to incarceration to ensure the victim's appearance in
27 court.

28 (3) The witness shall be notified of the right to retain counsel or, if
29 indigent, shall be appointed counsel for a bond hearing.

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E. Right to bail; presumption in favor of release.

(1) There shall be a presumption that a victim, as defined in Subsection C of this Section, be released on his own recognizance.

(2) The court shall consider all least restrictive means to ensure the witness's appearance in court pursuant to a subpoena, including but not limited to imposing conditions of release such as:

(a) Bond supervision or GPS monitoring to be paid by the applicant of the warrant.

(b) Treatment facilities, shelters, or lodging paid for by the applicant of the warrant.

(3) The court shall notify the witness of services offered by community partners or victim witness assistance coordinators.

F. Incarceration.

(1) The court shall exhaust all alternatives prior to ordering the incarceration of a victim as defined in Subsection C of this Section.

(2) If a judge determines there are no alternatives that will secure the victim's testimony, then the judge may order that the witness be placed in protective custody. If practically possible, a victim shall not be incarcerated in the same institution as the defendant.

G. Nothing in this Section shall be construed to limit the authority of the district attorney or defendant from securing a witness outside the jurisdiction of the court. Nothing in this Section shall be construed to create a release mechanism for a witness if the witness is incarcerated for any reason unrelated to a material witness warrant sought under this Section.

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§625. Material witness warrant data; reporting

A. By February fifteenth of each year, each criminal justice agency shall report all of the following information for the prior calendar year to the Department of Justice:

1 **(1) The number of material witness warrants applied for.**

2 **(2) The number of material witness warrants signed by a judge.**

3 **(3) The number of material witness warrants executed.**

4 **(4) The number of victims as defined in R.S. 15:257.1(C) incarcerated**
 5 **pursuant to a material witness warrant.**

6 **B.(1) By March first of each year, the Department of Justice shall**
 7 **transmit the information required in Subsection A of this Section to the**
 8 **chairman of the Senate Committee on Judiciary C and the chairman of the**
 9 **House Committee on Judiciary and shall publish the information on the**
 10 **Department of Justice's website.**

11 **(2) The Department of Justice's report shall also include the name and**
 12 **contact information of each criminal justice agency that failed to submit the**
 13 **report required by Subsection A of this Section.**

14 **C. "Criminal justice agency" has the same meaning as defined in R.S.**
 15 **15:624(D)(1).**

16 Section 2. This Act shall become effective upon signature by the governor or, if not
 17 signed by the governor, upon expiration of the time for bills to become law without signature
 18 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 19 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 20 effective on the day following such approval.

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

DIGEST

SB 146 Reengrossed

2019 Regular Session

Morrell

Present law provides that if the testimony of a witness is essential to the prosecution or the defense, and it may become impracticable to secure the presence of the person by subpoena, then upon motion of the district attorney or a defendant, a judge is to issue a warrant for the arrest of the witness. Present law further provides that the witness is to be arrested and held in the parish jail or other suitable place as designated by the court, until he gives an appearance bond as provided for defendants admitted to bail, or until his testimony has been given or dispensed with.

Proposed law provides an exception to present law for material witness warrants for victims of sex offenses and intimate partner violence.

Proposed law provides that in certain misdemeanor prosecution cases, defined as a sex offense under present law, or the present law crimes of battery of a dating partner, domestic abuse battery, or domestic abuse aggravated assault, a judge shall not order a material witness warrant to secure the presence of a victim.

Proposed law provides that in certain felony prosecution cases, defined as a sex offense under present law, or the present law crimes of battery of a dating partner, domestic abuse battery, or domestic abuse aggravated assault against a current or former spouse, a judge shall not order a material witness warrant to secure the presence of a victim unless an applicant presents an affidavit to the judge attesting to all of the following:

- (1) Efforts made by the applicant to secure the witness's appearance in court.
- (2) The witness testimony is essential to the prosecution or defense of a criminal proceeding.
- (3) The affidavit is filed in compliance with present law.

Proposed law provides that when the appearance of a secured victim occurs, immediate

Notification must be made to the judge who signed the warrant, the duty judge or magistrate as well as the applicant who requested the order.

Proposed law provides that upon notification that the witness has been secured:

- (1) Within the jurisdiction of the issued material warrant, the secured victim shall be brought before the judge on the next scheduled business day.
- (2) Outside the jurisdiction of the issued material warrant, the secured victim shall be brought before the judge as soon as practically possible.

Proposed law provides that the judge shall explore all available alternatives to incarceration to ensure the victim's appearance in court, and be notified of certain rights, including a right to counsel.

Proposed law provides a presumption that the victim be released on his own recognizance.

Proposed law provides certain conditions of release for such secured victim such as bond supervision, GPS monitoring, treatment facilities, shelters, lodging, or services offered by community partners or victim witness assistance coordinators.

Proposed law provides that the judge may order that the secured victim be placed in protective custody as an alternative to incarceration. If possible, a victim shall not be incarcerated in the same institution as the defendant.

Proposed law provides for a reporting system of information regarding material witness warrant data.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 15:257; adds R.S. 15:257.1 and 625)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Makes proposed law applicable to both the prosecution and the defense instead of only applicable to the prosecution.

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Deletes the provision which prohibits the arrest and incarceration of victims of domestic violence and sexual assault who refuse to testify against their abusers.
2. Adds a provision to provide limitations of arrest and incarceration of victims of domestic violence and sexually oriented criminal offenses who refuse to testify against their abusers.
3. Makes technical corrections.