

2020 Regular Session

SENATE BILL NO. 434

BY SENATOR MIZELL

CRIMINAL JUSTICE. Provides for immunity from prosecution and post-conviction relief for victims of human trafficking. (gov sig)

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AN ACT

To amend and reenact Code of Criminal Procedure Article 987 and R.S. 14:46.2(F) and to enact Code of Criminal Procedure Article 926.2 and R.S. 14:46.5, relative to human trafficking; to provide that convictions for certain offenses may be set aside when the defendant is a victim of human trafficking; to provide relative to expungement of records of arrest and conviction for certain offenses related to human trafficking; to provide for immunity from prosecution for victims of human trafficking; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Article 987 is hereby amended and reenacted and Code of Criminal Procedure Article 926.2 is hereby enacted to read as follows:

Art. 926.2. Motion to set aside conviction of certain offenses related to human trafficking; expungement and sealing of record of arrest and conviction

A. A motion to set aside a conviction pursuant to the provisions of this Article may be filed and served upon the district attorney at any time following a conviction involving the offenses of prostitution pursuant to R.S. 14:82,

1 prostitution by massage pursuant to R.S. 14:83.3 or 83.4, crime against nature
 2 pursuant to R.S. 14:89, or crime against nature by solicitation pursuant to R.S.
 3 14:89.2, when the defendant's participation in the offense was a result of having
 4 been a victim of human trafficking under R.S. 14:46.2 or trafficking of children
 5 for sexual purposes under R.S. 14:46.3, or a victim of a severe form of
 6 trafficking under the federal Trafficking Victims Protection Act, 22 U.S.C. 7101
 7 et seq.

8 B. The motion shall be in writing, shall describe the supporting evidence
 9 with particularity, and shall include copies of any documents showing that the
 10 defendant is entitled to relief under this Article.

11 C. The motion shall not be denied without a contradictory hearing unless
 12 it appears on the face of the motion that, as a matter of law, the defendant is not
 13 entitled to the relief sought.

14 D. The court shall grant the motion if the court finds by a preponderance
 15 of the evidence that the violation was a result of the defendant having been a
 16 victim of human trafficking. Documentation of the defendant's status as a
 17 victim of human trafficking provided by a federal, state, or local government
 18 agency shall create a presumption that the defendant's conviction was obtained
 19 as a result of having been a victim of human trafficking. However, such
 20 documentation shall not be required to grant a motion under this Article.

21 E. If the motion is granted, the court shall order the expungement and
 22 sealing, without cost to the defendant, of the record of arrest and conviction,
 23 including all records and files related to the defendant's arrest, citation,
 24 investigation, charge, conviction, probation, and sentence for the offense.

* * *

26 Art. 987. Motion to set aside conviction and dismiss prosecution; rule to show
 27 cause; order of dismissal forms to be used

28 "STATE OF LOUISIANA
 29 JUDICIAL DISTRICT FOR THE PARISH OF
 30 _____

31 No.: _____

32 Division: " _____ "

State of Louisiana
vs.

**MOTION TO SET ASIDE CONVICTION AND
DISMISS PROSECUTION**

NOW INTO HONORABLE COURT, comes

- Defendant, OR
- Defendant through undersigned Counsel,

who moves that the conviction pursuant to Louisiana Code of Criminal Procedure

- Article 894(B) Misdemeanors, OR
- Article 893(E) Felonies, **OR**
- Article 926.2 Offenses related to human trafficking**

in the above numbered case be set aside and that the prosecution dismissed in accordance with the Code of Criminal Procedure in that:

- ~~the~~ **The** period of the deferred sentence has run and petitioner has successfully completed the terms of his probation. **, OR**
- The defendant was convicted of an offense related to human trafficking.**

The mover is further identified below:

DOCKET NUMBER: _____

CHARGE: _____

DATE OF ARREST: _____

ARRESTING AGENCY: _____

CITY/PARISH OF ARREST: _____

The Mover prays that, after a contradictory hearing with the District Attorney's Office, the Court order the above numbered case be set aside and that the prosecution dismissed in accordance with the Code of Criminal Procedure.

Respectfully submitted,

Signature of Attorney for Mover/Defendant

Attorney for Mover/Defendant Name

Attorney's Bar Roll No.

Address

City, State, ZIP Code

Telephone Number

If not represented by counsel:

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Signature of Mover/Defendant

Mover/Defendant Name

Address

City, State, ZIP Code

Telephone Number

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**STATE OF LOUISIANA
JUDICIAL DISTRICT FOR THE PARISH OF**

No.: _____

Division: " _____ "

State of Louisiana

vs.

RULE TO SHOW CAUSE

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IT IS HEREBY ORDERED, that the District Attorney show cause on the _____ day of _____, 20 ____, at ____ o'clock __ m why the foregoing motion should not be granted.

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THUS ORDERED AND SIGNED this ____ day of _____, 20 ____ at _____, Louisiana, _____.

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JUDGE

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PLEASE SERVE:

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1. District Attorney: _____

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2. Attorney for Defendant and/or Defendant _____

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**STATE OF LOUISIANA
JUDICIAL DISTRICT FOR THE PARISH OF**

No.: _____

Division: " _____ "

State of Louisiana

vs.

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ORDER OF DISMISSAL

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Considering the Motion to Set Aside Conviction and Dismiss Prosecution, the hearing conducted on the representation of the State of Louisiana of its consent hereto, and that there is no opposition for any good cause appearing herein;

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IT IS ORDERED, ADJUDGED AND DECREED that this conviction is set aside and the prosecution dismissed for purposes of expungement.

1 **THUS ORDERED AND SIGNED** this ____ day of _____, 20 ____ at
2 _____, Louisiana.

3 _____
4 JUDGE

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6 **PLEASE SERVE:**

- 7 1. District Attorney: _____
- 8 2. Attorney for Defendant and/or Defendant _____ "

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10 Section 2. R.S. 14:46.2(F) is hereby amended and reenacted and R.S. 14:46.5 is
11 hereby enacted to read as follows:

12 §46.2. Human trafficking

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15 ~~F.(1) A victim of trafficking involving services that include commercial~~
16 ~~sexual activity or any sexual contact which constitutes a crime pursuant to the laws~~
17 ~~of this state shall have an affirmative defense to prosecution for any of the following~~
18 ~~offenses which were committed as a direct result of being trafficked:~~

- 19 ~~(a) R.S. 14:82 (Prostitution).~~
- 20 ~~(b) R.S. 14:83.3 (Prostitution by massage).~~
- 21 ~~(c) R.S. 14:83.4 (Massage; sexual conduct prohibited).~~
- 22 ~~(d) R.S. 14:89 (Crime against nature).~~
- 23 ~~(e) R.S. 14:89.2 (Crime against nature by solicitation).~~

24 ~~(2) Any person seeking to raise this affirmative defense shall provide written~~
25 ~~notice to the state at least forty-five days prior to trial or at an earlier time as~~
26 ~~otherwise required by the court.~~

27 ~~(3) Any person determined to be a victim pursuant to the provisions of this~~
28 ~~Subsection shall be notified of any treatment or specialized services for sexually~~
29 ~~exploited persons to the extent that such services are available.~~

30 **No victim of trafficking as provided by the provisions of this Section**
31 **shall be prosecuted for unlawful acts committed as a direct result of being**
32 **trafficked. Any child determined to be a victim pursuant to the provisions of**
33 **this Subsection shall be eligible for specialized services for sexually exploited**
34 **children.**

* * *

**§46.5. Immunity from prosecution for offenses related to human trafficking;
services to victims**

A.(1) Notwithstanding any other provision of law, no victim of trafficking as provided by the provisions of R.S. 14:46.2 or 46.3 shall be prosecuted for unlawful acts committed as a direct result of being trafficked.

(2) Any child determined to be a victim of trafficking pursuant to the provisions of this Subsection shall be eligible for specialized services for sexually exploited children.

B. The provisions of Chapter 1 of Title V of the Children's Code regarding the multidisciplinary team approach applicable to children who have been abused or neglected, to the extent practical, shall apply to the children who are victims of trafficking as provided by the provisions of R.S. 14:46.2 or 46.3.

Section 3. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become 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 434 Engrossed

2020 Regular Session

Mizell

Present law provides definitions and penalties for the crimes of human trafficking and trafficking of children for sexual purposes.

Proposed law retains present law.

Present law provides that a victim of the crime of trafficking of children for sexual purposes cannot be prosecuted for crimes committed as a direct result of being trafficked. Present law further provides that any child determined to be a victim of the crime of trafficking of children for sexual purposes is eligible for specialized services for sexually exploited children.

Proposed law retains present law.

Present law provides that a victim of the crime of human trafficking involving services that

include commercial sexual activity or any sexual contact that constitutes a crime pursuant to present law has an affirmative defense to prosecution for certain present law sex offenses, including prostitution and crime against nature.

Proposed law deletes present law and provides that a victim of the crime of human trafficking cannot be prosecuted for crimes committed as a direct result of being trafficked, and further provides that any child determined to be a victim of the crime of human trafficking is eligible for specialized services for sexually exploited children.

Proposed law provides that, notwithstanding any other provision of present law, a victim of trafficking as provided by present law cannot be prosecuted for any crime committed as a direct result of being trafficked. Proposed law further provides that any child determined to be a victim of trafficking pursuant to the provisions of proposed law is eligible for specialized services for sexually exploited children. Proposed law further provides that present law provisions regarding the multidisciplinary team approach applicable to children who have been abused or neglected, to the extent practical, apply to the children who are victims of trafficking.

Proposed law provides that a motion to set aside a conviction may be filed and served upon the district attorney at any time following a conviction involving the present law crimes of prostitution, prostitution by massage, crime against nature, or crime against nature by solicitation, when the defendant's participation in the crime was a result of having been a victim of human trafficking or trafficking of children for sexual purposes under present law, or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act. Proposed law further provides that the motion must be in writing, describe the supporting evidence with particularity, and include copies of any documents showing that the defendant is entitled to relief under proposed law. Proposed law further provides that the motion cannot be denied without a contradictory hearing, unless it appears on the face of the motion that the defendant is not entitled to the relief sought as a matter of law.

Proposed law provides that the court must grant the motion to set aside if the court finds by a preponderance of evidence that the crime was committed as a result of the defendant having been a victim of human trafficking. Proposed law further provides that documentation of the defendant's status as a victim of human trafficking provided by a federal, state, or local government agency creates a presumption that the defendant's conviction was obtained as a result of having been a victim of human trafficking, but such documentation is not required in order to grant the motion to set aside. Proposed law further provides that if the motion is granted, the court is to order the expungement and sealing, without cost to the defendant, of the record of arrest and conviction, including all records and files related to the defendant's arrest, citation, investigation, charge, conviction, probation, and sentence.

Present law provides forms for the motion to set aside conviction and dismiss prosecution provided for by present law.

Proposed law retains present law and adds provisions to the forms relative to the proposed law motion to set aside conviction of certain offenses related to human trafficking.

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

(Amends C.Cr.P. Art. 987 and R.S. 14:46.2(F); adds C.Cr.P. Art. 926.2 and R.S. 14:46.5)