

SENATE BILL NO. 146

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

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

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AN ACT

To amend and reenact R.S. 15:257 and to enact R.S. 15:257.1 and 625, relative to compulsory process; to provide limitations of arrest and incarceration of victims of domestic violence and sexually oriented criminal offenses who refuse to testify against their abusers; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 15:257 is hereby amended and reenacted and R.S. 15:257.1 and 625 are hereby enacted to read as follows:

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

~~Whenever~~ **A. Except as provided in R.S. 15:257.1, whenever** it shall appear, upon motion of the district attorney or upon motion of a defendant supported by his affidavit, that the testimony of any witness is essential to the prosecution or the defense, as the case may be, and it is shown that it may become impracticable to secure the presence of the person by subpoena, a judge, as defined in Article 931 of the Code of Criminal Procedure, shall issue a warrant for the arrest of the witness. The witness shall be arrested and held in the parish jail, or such other suitable place as shall be designated by the court, until he gives an appearance bond as provided for defendants when admitted to bail, or until his testimony shall have been given in the cause or dispensed with.

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

A. The legislature hereby finds and declares that domestic violence and sexual assault are major public health problems and violations of human rights.

The legislature further finds that in order to be in compliance with the Violence

1 Against Women Act, this statute is meant to discourage the use of material
2 witness warrants and enforce the premise that the use of material witness
3 warrants for victims of intimate partner violence or sex crimes is an
4 extraordinary measure that should be used only when absolutely necessary and
5 that any incarceration shall occur only after all other remedies have been
6 exhausted in order to prevent further victimization and trauma to the victims.

7 B. A judge shall not order a material witness warrant to secure the
8 presence of a victim listed in the indictment or bill of information in a
9 misdemeanor prosecution in cases where the instituted charges are one of a sex
10 offense under R.S. 15:541 or a listed victim in the indictment or bill of
11 information of a misdemeanor offense committed under R.S. 14:34.9 (battery
12 of a dating partner) or R.S. 14:35.3 (domestic abuse battery) that is a pending
13 matter before a court.

14 C.(1) 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 solely for the
16 purpose of securing the attendance or testimony of a victim listed in a felony
17 prosecution in cases where the instituted charges are either:

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

19 (b) An offense committed under R.S. 14:34.9 (battery of a dating
20 partner), R.S. 14:35.3 (domestic abuse battery), R.S. 14:37.7 (domestic abuse
21 aggravated assault), or R.S. 14:34.9.1 (aggravated assault upon a dating
22 partner).

23 (c) A case where the victim listed in the indictment or bill of information
24 of the current felony charge pending before the court is the current or former
25 spouse or the current or former dating partner as defined by R.S. 46:2151,
26 regardless of whether or not the individuals reside in the same household that
27 is a pending matter before a court.

28 (2) Notwithstanding Paragraph (1) of this Subsection, a judge may order
29 a material witness warrant to secure the presence of a victim listed in the
30 indictment or bill of information in a felony prosecution if the applicant

1 presents an affidavit to the judge attesting to all of the following:

2 (a) The efforts made by the applicant to secure the victim's appearance
3 in court.

4 (b) That the testimony of the victim is essential to the prosecution or
5 defense of a criminal proceeding.

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

8 (3) Only a qualified victim for which a material witness warrant is being
9 sought pursuant to this Section shall have standing to raise the protections
10 provided in this Section.

11 D.(1) When a witness who is a victim of any of the offenses enumerated
12 in Subsection B or C of this Section is secured pursuant to a material witness
13 warrant issued by a judge, notification shall immediately be made to the judge
14 who signed the warrant and the duty judge or magistrate, as well as the
15 applicant who requested the order. Upon notification that the victim has been
16 secured, the victim shall be brought before a judge pursuant to the following:

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

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

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

24 (3) The victim shall be notified of the right to retain counsel or, if
25 indigent, shall be authorized to apply for counsel for a bond hearing.

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

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

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

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

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

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

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

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

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19 §625. Material witness warrant data; reporting

20 A. By February fifteenth of each year, each district attorney or other
21 prosecution agency shall report all of the following information for the prior
22 calendar year to the Louisiana Commission on Law Enforcement and
23 Administration of Criminal Justice:

24 (1) The number of material witness warrants applied for pursuant to this
25 Section which has been filed into the record of any criminal prosecution
26 proceeding within their jurisdiction.

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

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

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

1 **B. By March first of each year, the Louisiana Commission on Law**
2 **Enforcement and Administration of Criminal Justice shall transmit the**
3 **information required in Subsection A of this Section to the chairman of the**
4 **Senate Committee on Judiciary C and the chairman of the House Committee**
5 **on Judiciary and shall publish the information on the website of the Louisiana**
6 **Commission of Law Enforcement and Administration of Criminal Justice.**

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____