

2022 Regular Session

SENATE BILL NO. 148

BY SENATORS MIZELL, ABRAHAM, BARROW, CARTER, FOIL, WARD AND WHITE

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

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Art. 987 and R.S. 14:46.2(A)(1), (C)(1)

3 and (3)(b) and (f), and (D), to enact Code of Criminal Procedure Art. 987.1, R.S.

4 14:46.2(C)(3)(k) and (l), relative to human trafficking; to provide that convictions

5 for certain offenses may be set aside when the defendant is a victim of human

6 trafficking; to provide relative to expungement of records of arrest and conviction

7 for certain offenses related to human trafficking; to provide for immunity from

8 prosecution for victims of human trafficking; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Code of Criminal Procedure Art. 987 is hereby amended and reenacted
11 and Code of Criminal Procedure Art. 987.1 is hereby enacted to read as follows:

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

14 "STATE OF LOUISIANA
15 JUDICIAL DISTRICT FOR THE PARISH OF

16 _____

17

18 No.: _____ Division: " _____ "

19 State of Louisiana

20 vs.

21 _____

22 MOTION TO SET ASIDE CONVICTION AND

23 DISMISS PROSECUTION

1 NOW INTO HONORABLE COURT, comes

2 Defendant, OR

3 Defendant through undersigned Counsel,

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

5 Article 894(B) Misdemeanors, OR

6 Article 893(E) Felonies, **OR**

7 **Article 987.1 Offenses related to human trafficking**

8 in the above numbered case be set aside and that the prosecution dismissed in accordance with the Code

9 of Criminal Procedure in that:

10 ~~the~~ **The** period of the deferred sentence has run and petitioner has successfully completed the

11 terms of his probation: **OR**

12 **The defendant was convicted of an offense related to human trafficking.**

13
14 The mover is further identified below:

15 DOCKET NUMBER: _____

16 CHARGE: _____

17 DATE OF ARREST: _____

18 ARRESTING AGENCY: _____

19 CITY/PARISH OF ARREST: _____

20 The Mover prays that, after a contradictory hearing with the District Attorney's Office, the Court

21 order the above numbered case be set aside and that the prosecution dismissed in accordance with the

22 Code of Criminal Procedure.

23 Respectfully submitted,

24 _____

25 Signature of Attorney for Mover/Defendant

26 _____

27 Attorney for Mover/Defendant Name

28 _____

29 Attorney's Bar Roll No.

30 _____

31 Address

32 _____

33 City, State, ZIP Code

34 _____

35 Telephone Number

36 _____

37 **If not represented by counsel:**

38 _____

39 Signature of Mover/Defendant

40 _____

41 Mover/Defendant Name

42 _____

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City, State, ZIP Code

Telephone Number

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

No.: _____ **Division:** " _____ "
State of Louisiana
vs.

RULE TO SHOW CAUSE

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.

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

JUDGE

PLEASE SERVE:

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

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

No.: _____ **Division:** " _____ "
State of Louisiana
vs.

ORDER OF DISMISSAL

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;

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

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

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JUDGE

PLEASE SERVE:

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

Art. 987.1. 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, prostitution by massage pursuant to R.S. 14:83.3 or 83.4, crime against nature pursuant to R.S. 14:89, or crime against nature by solicitation pursuant to R.S. 14:89.2, or any other nonviolent offense, when the defendant's participation in the offense was a result of having been a victim of human trafficking under R.S. 14:46.2, trafficking of children for sexual purposes under R.S. 14:46.3, or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act, 22 U.S.C. 7101 et seq.

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

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

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

1 **E. If the motion is granted, the court shall order the expungement and**
 2 **sealing, without cost to the defendant, of the record of arrest and conviction.**
 3 **The court shall further order that copies of all records and files related to the**
 4 **defendant's arrest, citation, investigation, charge, conviction, probation, and**
 5 **sentence for the offense be provided to the defendant without cost.**

6 Section 2. R.S. 14:46.2(A)(1), (C)(1) and (3)(b) and (f), and (D) are hereby amended
 7 and reenacted and R.S. 14:46.2(C)(3)(k) and (l) are hereby enacted to read as follows:

8 §46.2. Human trafficking

9 A. It shall be unlawful:

10 (1)(a) For any person to knowingly recruit, harbor, transport, provide, solicit,
 11 receive, isolate, entice, obtain, **patronize, procure, purchase, hold, restrain,**
 12 **induce, threaten, subject,** or maintain the use of another person through fraud,
 13 force, or coercion to provide services or labor.

14 (b) For any person to knowingly recruit, harbor, transport, provide, solicit,
 15 sell, purchase, **patronize, procure, hold, restrain, induce, threaten, subject,**
 16 receive, isolate, entice, obtain, or maintain the use of a person under the age of
 17 twenty-one years for the purpose of engaging in commercial sexual activity
 18 regardless of whether the person was recruited, harbored, transported, provided,
 19 solicited, sold, purchased, received, isolated, enticed, obtained, or maintained
 20 through fraud, force, or coercion. It shall not be a defense to prosecution for a
 21 violation of the provisions of this Subparagraph that the person did not know the age
 22 of the victim or that the victim consented to the prohibited activity.

23 * * *

24 C. For purposes of this Section:

25 (1) "Commercial sexual activity" means any sexual act performed or
 26 conducted when anything of value has been given, promised, or received by any
 27 person, **directly or indirectly, including the production of pornography.**

28 * * *

29 (3) "Fraud, force, or coercion" shall include but not be limited to any of the

1 following:

2 * * *

3 (b) Physically restraining, **isolating, confining,** or threatening to physically
4 restrain, **isolate, or confine** another person.

5 * * *

6 (f) The actual or threatened destruction, concealment, removal, **withholding,**
7 confiscation, or possession of any actual or purported passport or other immigration
8 document, or any other actual or purported government identification document, of
9 another person.

10 * * *

11 **(k) Exposing or threatening to expose any fact or information that would**
12 **subject an individual to criminal or immigration proceedings.**

13 **(l) Causing or threatening to cause financial harm to an individual or**
14 **using financial control over an individual.**

15 * * *

16 D. It shall not be a defense to prosecution for a violation of this Section that
17 the person being recruited, harbored, transported, provided, solicited, received,
18 isolated, **patronized, procured, purchased,** enticed, obtained, or maintained is
19 actually a law enforcement officer or peace officer acting within the official scope
20 of his duties.

21 * * *

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

DIGEST

SB 148 Engrossed

2022 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.

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, or any other nonviolent offense, 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(A)(1), (C)(1) and (3)(b) and (f), and (D); adds C.Cr.P. Art. 987.1, R.S. 14:46.2(C)(3)(k) and (l))