

1 ~~(1.1)~~(3) "Crime victim who is a minor" means a person under the age of
2 eighteen against whom any of the following offenses have been committed:

3 (a) Any homicide or any felony offense defined or enumerated in R.S.
4 14:2(B).

5 (b) Any sexual offense.

6 (c) The offenses of vehicular negligent injuring and first degree vehicular
7 negligent injuring.

8 ~~(2)~~(4) "Critical stage" means any judicial proceeding at which there is a
9 disposition of the charged offense or a lesser offense, or a sentence imposed pursuant
10 thereto.

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

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

21 (7) "Healthcare provider" has the same meaning as provided in R.S.
22 40:1216.1.

23 ~~(4)~~(8) "Inmate" means a person convicted of a felony.

24 ~~(5)~~(9) "Judicial agency" means the district court and officers thereof,
25 including the judge, the prosecutor, and the clerk of court, the Crime Victims
26 Reparations Board, the Department of Public Safety and Corrections, and the
27 division of probation and parole.

28 ~~(6)~~(10) "Judicial proceeding" means any contradictory proceeding held in
29 open court.

1 ~~(7)~~(11) "Law enforcement agency" means the sheriff, constable, or police
2 force as defined by law, and the Department of Public Safety and Corrections.

3 ~~(8)~~(12) "Registration" means the completion of a form which is filed with
4 the law enforcement agency investigating the offense of which the person is a victim,
5 as specified in R.S. 46:1844(T), which shall include an address and telephone
6 number at which the victim or designated family member may be notified. Such
7 forms shall be promulgated by the Louisiana Commission on Law Enforcement and
8 Administration of Criminal Justice in accordance with R.S. 46:1844(R).

9 (13) "Sexual assault advocate" has the same meaning as provided in R.S.
10 46:2186.

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

13 ~~(9)~~(15) "Victim" means a person against whom any of the following offenses
14 have been committed:

15 (a) Any homicide, or any felony offense defined or enumerated in R.S.
16 14:2(B).

17 (b) Any sexual offense.

18 (c) The offenses of vehicular negligent injuring and first degree vehicular
19 negligent injuring.

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

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

1 (17) "Victim of sexual assault" means any natural person who identifies as
2 a victim of sexual assault as defined in R.S. 46:2184, or the family member of such
3 person if the victim is under eighteen years of age, incompetent, or deceased,
4 provided that in no instance does the term include a family member identified by the
5 victim as the perpetrator.

6 ~~(11)~~(18) "Victim's family" includes a spouse, parent, child, stepchild, sibling,
7 or legal representative of the victim, except when the person is in custody for an
8 offense or is the defendant.

9 ~~(12)~~(19) "Witness" means any person who has been or is expected to testify
10 for the prosecution, or who, by reason of having relevant information, is subject to
11 call or likely to be called as a witness for the prosecution, whether or not any action
12 or proceeding has yet been commenced.

13 §1843. Eligibility of victims

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

18 §1844. Basic rights for victim and witness

19 A. Services and information concerning services available to victims and
20 witnesses of a crime.

21 * * *

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

26 * * *

27 (b) ~~Parole board~~ Committee on parole or pardon board hearings or other
28 release hearings.

29 * * *

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

5 M. Victims' right to seek restitution.

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

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

16 * * *

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

28 * * *

1 §1845. Additional rights for victims of sexual assaults; notification of rights

2 A. The rights provided to victims of sexual assault contained in this Section
3 and R.S. 46:1845.1 attach when a victim seeks the assistance of either a law
4 enforcement official or a healthcare provider. However, a victim of sexual assault
5 is under no obligation to report the crime to a law enforcement official or participate
6 in a criminal prosecution of the perpetrator and retains all the rights of these
7 provisions regardless of whether a criminal report is made or withdrawn. A victim
8 of sexual assault is under no obligation to seek medical attention or submit to a
9 forensic medical examination and retains all the rights of these provisions regardless
10 of whether the victim receives a forensic medical examination or administration of
11 a sexual assault collection kit.

12 B.(1) A victim of sexual assault has the right to be accompanied by a sexual
13 assault advocate prior to the administration of a forensic medical examination or an
14 interview by a law enforcement official or district attorney and at all times while
15 receiving treatment by a healthcare provider. If an advocate is requested prior to the
16 administration of a forensic examination, the examination shall not commence until
17 an advocate is provided, unless one is unavailable.

18 (2) A victim of sexual assault retains the right to be accompanied by a sexual
19 assault advocate even if the victim has waived the right in a previous examination
20 or interview.

21 (3) As provided in R.S. 46:2187, each communication with a sexual assault
22 advocate is confidential and privileged, and the presence of a sexual assault advocate
23 shall not be construed to deny or defeat any other privilege provided by law.

24 C.(1) The Louisiana Foundation Against Sexual Assault shall develop a
25 written document notifying victims of their rights pursuant to this Section, readable
26 by a person proficient in English at the fifth-grade level, that contains the following
27 information:

1 (a) A statement providing that a victim of sexual assault is not required to
2 report the assault to law enforcement or to participate in criminal proceedings against
3 the perpetrator in order to retain the rights provided in this Section.

4 (b)(i) A statement notifying the victim of sexual assault that such person has
5 the right to request a sexual assault advocate as provided in Subsection B of this
6 Section to be summoned by the healthcare provider prior to beginning a forensic
7 medical examination, and a statement notifying the victim of the consequences of
8 delaying a forensic examination if either a sexual assault advocate cannot be
9 summoned in a timely manner or the victim declines the opportunity to request an
10 advocate. The notification shall also contain information, including telephone
11 numbers and internet websites, for contacting sexual assault centers and sexual
12 assault advocates.

13 (ii) A statement notifying the victim that such person has the right to request
14 a sexual assault advocate as provided in Subsection B of this Section to be
15 summoned by a law enforcement official prior to beginning an interview unless a
16 delay would result in an immediate and present danger to the public or unless an
17 advocate is unavailable.

18 (c) Information on state and federal victim reparations and compensation
19 funds available for medical and other costs associated with a sexual assault.

20 (d) Information on the right to restitution for victims if a criminal conviction
21 is obtained.

22 (e) A summary of the provisions of R.S. 46:1216.1 governing medical
23 treatment and the billing and payment for those services.

24 (f) Information regarding the right to have a sexual assault medical forensic
25 examination regardless of whether the victim reports to or cooperates with law
26 enforcement.

27 (g) Information regarding the availability of protective orders and policies
28 related to their enforcement.

1 (h) Information regarding policies regarding the storage, preservation, and
2 disposal of sexual assault collection kits.

3 (i) Information regarding the process, if any, to request preservation of
4 sexual assault evidence collection kits or the probative evidence from such kits.

5 (j) A summary of rights of crime victims and witnesses under Louisiana
6 Constitution, Article I, §25, this Chapter, and any other relevant law including the
7 victim's right to retain counsel to confer with law enforcement and judicial agencies
8 regarding the disposition of the victim's case.

9 (2) The attorney general shall make the written notice required by the
10 provisions of this Section publicly available on its internet website.

11 D.(1) A healthcare provider, prior to conducting a forensic medical
12 examination, shall provide a victim of sexual assault with the written notification of
13 the rights provided in this Section.

14 (2) A law enforcement official, prior to interviewing a victim of sexual
15 assault, shall provide the victim with a written notification of the rights contained in
16 this Section.

17 §1845.1. Right to privacy; victims of sexual assault

18 A. No subpoena or subpoena duces tecum may be issued requesting records
19 of a victim of sexual assault except by a court order issued in accordance with the
20 provisions of this Section.

21 B. Prior to the issuance of a court order for the production and disclosure of
22 records of a victim of sexual assault, a person requesting such production and
23 disclosure shall demonstrate all of the following:

24 (1) That the party requesting the records identify with particularity the
25 records being requested and the location of the records.

26 (2) That the records are relevant, material, and otherwise admissible in
27 accordance with the provisions of the Code of Evidence.

28 (3) That the records are not otherwise reasonably obtainable prior to trial by
29 the exercise of due diligence.

1 (4) That the party requesting the records cannot properly prepare for trial
2 without the production and disclosure of the records in advance of trial.

3 (5) That the request for the production and disclosure of records is made in
4 good faith and is not intended to harass the victim.

5 C.(1) A party requesting the production and disclosure of records in
6 accordance with the provisions of this Section shall provide the following written
7 notice to either the victim or legal counsel of record of the victim:

8 "A motion has been filed by _____ requesting the court to produce
9 and disclose your _____ (specify records sought) records. A court hearing on
10 this matter has been scheduled for the _____ day of _____, _____ at the _____
11 division of _____ court in the parish of _____ . At this hearing, the party
12 requesting the records will be required to demonstrate the need to obtain your
13 personal records. You have the right to attend and state any privacy interests you
14 have in your records at this hearing. This is a very serious matter. You should
15 contact a lawyer immediately so that you can be prepared for the court hearing. You
16 have the right to hire a lawyer and to have him or her represent you. If you cannot
17 afford to hire a lawyer, you may call your local legal services organization. Whether
18 or not you decide to hire a lawyer, you have the right to attend the hearing and state
19 your privacy interests in your personal records. If you have any questions
20 concerning this notice, you may call the telephone number of the district attorney's
21 office which is _____."

22 (2) If the attorney for the person accused of committing the crime is the
23 person requesting the production and disclosure of records, the district attorney may
24 receive the notice required by this Subsection on behalf of the victim, who will then
25 timely provide notice to the victim, or if represented, to the victim's legal counsel.

26 (3) A court shall issue an order for the production and disclosure of records
27 of a victim of sexual assault only after a contradictory hearing with the victim, or if
28 represented, by the victim's legal counsel.

1 (4) Nothing in this Section shall be construed to deny or defeat any privilege
2 or right otherwise provided by law.

3 D. Willful disregard of the rights of victims as provided in this Section shall
4 be punishable as contempt of court.

5 E. For purposes of this Section:

6 (1) "Records" includes but is not limited to any medical, psychological,
7 educational, social networking, or telephone records of the victim in the custody of
8 a third party.

9 (2) "Third party" means any person who is not an employee of the state of
10 Louisiana, any of its agencies, or any of its political subdivisions.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 309 Engrossed

2017 Regular Session

Moreno

Abstract: Provides for additional rights for victims of sexual assaults including the right to a sexual assault advocate and the right to privacy, and provides for certain procedures governing these rights.

Present law provides for the rights of crime victims and their families, including but not limited to the right to advance notification of certain judicial proceedings, the right to counsel, the right to be interviewed in a private setting, the right to be present and heard at all critical stages of the proceedings, the right to seek restitution, and the right to the return of a victim's property. Provides that a victim is eligible to receive these rights only if the victim reports the crime to law enforcement within 72 hours of the occurrence or discovery of the crime, unless extenuating circumstances exist.

Proposed law retains present law except it provides that stolen or other personal property of the victim shall be returned when no longer needed as evidence by the judicial and law enforcement agencies at no cost to the victim or the victim's family. Also provides that the notification of parole and pardon hearings shall be made to any person who files a victim registration and notification form. Makes technical changes to refer to the committee on parole, as opposed to the obsolete name of the "board of parole".

Proposed law provides these additional rights for victims of sexual assaults and provides that these rights attach regardless of whether the assault is reported to law enforcement:

- (1) The right to be accompanied by a sexual assault advocate prior to the administration of a forensic medical examination or an interview by law enforcement or the district attorney. Further provides that communications between a victim and sexual assault advocate are confidential and privileged.
- (2) The right to be notified and the right to a contradictory hearing when a person requests the production and disclosure of certain records of the victim. Provides for

the specific notification form to be used and requires the person requesting these records to do all of the following:

- (a) Identify with particularity the records and location of the records being sought.
- (b) Demonstrate that the records are relevant, material, and otherwise admissible.
- (c) Demonstrate that the records are not otherwise reasonably obtainable prior to trial by the exercise of due diligence.
- (d) Demonstrate that the party cannot properly prepare for trial without the records.
- (e) Demonstrate that the request is made in good faith and not intended to harass the victim.

Proposed law provides that a willful violation of the proposed law privacy rights shall be punishable as contempt of court.

Proposed law requires the La. Foundation Against Sexual Assault to develop a written form notifying victims of their rights. Requires law enforcement officials and healthcare providers to disseminate the written notification of rights to sexual assault victims. Requires the attorney general to publish this notice on the internet.

(Amends R.S. 46:1842, 1843, and 1844(A)(2)(b), (L), (M)(1) and (2), and (O); Adds R.S. 46:1845 and 1845.1)