

**HOUSE SUMMARY OF SENATE AMENDMENTS**

**HB 309**

**2017 Regular Session**

**Moreno**

CRIMINAL/VICTIMS: Provides relative to rights of victims of criminal offenses

**Synopsis of Senate Amendments**

1. Regarding crime victims' rights, amends the definition of "crime victim who is a minor" to include human trafficking-related offenses.
2. Requires that the crime victim registration form include an email address for notification.
3. Adds that the definition of a crime victim's family also excludes a person who has been identified as the perpetrator regardless of whether the perpetrator is in custody.
4. Reinserts present law clarifying that a crime victim or victim's family receive notification of a pardon and parole hearing of the person convicted of the crime.
5. Removes proposed provisions allowing a victim of sexual assault to refuse to report the crime to law enforcement, participate in a criminal prosecution of the perpetrator, seek medical attention, or submit to a medical examination.
6. Removes the requirement that the La. Foundation Against Sexual Assault develop forms notifying sexual assault victims of their rights, that law enforcement and healthcare providers disseminate the written notification of their rights, and that the attorney general publish this notice on the internet.
7. Adds that no provision in proposed law shall negate or impair mandatory reporting requirements or any investigations or prosecutions of crimes against children.
8. Allows for the conduction of a forensic medical examination or investigative interview without a sexual assault advocate if one is not reasonably available.
9. Adds that a district attorney must make reasonable efforts to interview a victim or victim's family member to determine the facts in the case and the desire for restitution.
10. Adds that all law enforcement and judicial agencies must provide a private setting for all interviews.
11. Authorizes a sexual assault victim to refuse any requests for interviews from the attorney for the defendant.
12. Provides for a contradictory hearing on the production of certain records pertaining to adult victims of certain offenses, and requires the district attorney to provide written notice to the sexual assault victim of a hearing on the production of the victim's records.
13. Adds that sexual assault victim's records obtained without full compliance with proposed law are inadmissible and may be punishable by contempt of court.

### **Digest of Bill as Finally Passed by Senate**

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.

Present law defines "crime victim who is a minor" as a person under the age of eighteen against whom certain identified crimes were committed and defines "victim" as any person against whom those same crimes were committed. The identified crimes include:

- (1) Any homicide, or any felony offense.
- (2) Any sexual offense.
- (3) The offenses of vehicular negligent injuring and first degree vehicular negligent injuring.

Proposed law changes "any sexual offense" in present law definitions to "any sex offense or human trafficking-related offense" and otherwise retains present law.

Present law defines "victim's family" as including a spouse, parent, child, stepchild, sibling, or legal representative of the victim, except when the person is in custody for an offense or is the defendant.

Proposed law retains present law and adds that "victim's family" also excludes a person who has been identified as the perpetrator, regardless of whether the person is in custody.

Proposed law adds definitions of "forensic medical examination", "healthcare provider", "sexual assault advocate", "sexual assault collection kit", and "victim of sexual assault".

Present law provides for a form filed with the law enforcement agency investigating the offense of which a person is a victim and provides for the information provided by the victim for notification.

Proposed law retains present law and adds that the form shall also include an email address for notification.

Present law requires victim or victim's family to receive notification of pardon or parole hearings of the person convicted of the crime.

Proposed law provides that the notification of parole and pardon hearings shall also be made to any person who files a victim registration and notification form.

Proposed law provides that the rights provided to victims of sexual assault in proposed law attach whether or not a victim seeks the help of law enforcement or a healthcare provider and whether or not the victim receives a forensic medical exam or is administered a sexual assault collection kit.

Proposed law provides that nothing in proposed law is to negate or impair the mandatory reporting of crimes against children under 18 or to impair any investigation or prosecution of such crime.

Proposed law provides that a victim of sexual assault has the right to be notified and request a sexual assault advocate during a forensic medical examination or interview with law enforcement.

Proposed law provides that the district attorney shall make reasonable efforts to interview the victim or designated family to determine the facts and whether the victim or family is seeking restitution.

Proposed law provides that all law enforcement and judicial agencies must provide a private setting for all interviews of victims of sexual assault and only persons directly and immediately related to the interviewing of the victim be present for such interviews.

Proposed law authorizes the victim of a sexual assault or the parents of a minor victim to refuse any request for interviews from the attorney for the defendant.

Proposed law provides that a contradictory hearing with the district attorney must occur before a victim of sexual assault may be subpoenaed to testify by the defendant and willful disregard of proposed law may be punishable as contempt of court.

Proposed law provides that failure to comply with the provisions of proposed law shall not affect the admissibility of evidence in a civil or criminal proceeding nor shall failure to comply invalidate a final disposition.

Proposed law provides that proposed law does not create a cause of action for costs or attorney fees, for the appointment of counsel for a victim, or for compensation or damages against the state; however, provides that nothing in proposed law precludes the filing for a writ of mandamus.

Present law provides that if a defendant is charged with certain crimes, certain records of a minor victim cannot be produced unless a contradictory hearing is held with the state.

Proposed law changes the crimes a defendant must be charged with to trigger the mandatory contradictory hearing provided for in present law and expands the present law to apply to such crime victims regardless of the age of the victim. Provides that the district attorney must provide written notice to the victim of a hearing on the production of the victim's records.

Proposed law provides that records obtained without full compliance are inadmissible and willful violations may be punishable as contempt of court.

(Amends R.S. 15:260 and R.S. 46:1842, 1843, and 1844(A)(2)(b), (L), (M)(1) and (2), and (O); Adds R.S. 46:1845)