

2017 Regular Session

HOUSE BILL NO. 309

BY REPRESENTATIVE MORENO

1 AN ACT

2 To amend and reenact R.S. 15:260 and R.S. 46:1842, 1843, and 1844(A)(2)(b), (L), (M)(1)  
3 and (2), and (O) and to enact R.S. 46:1845, relative to rights of crime victims; to  
4 provide relative to applicability; to provide relative to a return of property; to provide  
5 for notification of pardon or parole; to provide additional rights for victims of sexual  
6 assault; to provide for notification of rights; to provide for duties and responsibilities;  
7 to provide for a sexual assault advocate; to provide relative to the right to privacy;  
8 to provide procedures and requirements; to provide definitions; and to provide for  
9 related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 46:1842, 1843, and 1844(A)(2)(b), (L), (M)(1) and (2), and (O) are  
12 hereby amended and reenacted and R.S. 46:1845 is hereby enacted to read as follows:

13 §1842. Definitions

14 In this Chapter:

15 (1) "Crime" means an act defined as a felony, misdemeanor, or delinquency  
16 under state law.

17 (2) "Crime lab" means a laboratory that conducts a forensic analysis of  
18 physical evidence in criminal matters.

19 ~~(1.1)~~(3) "Crime victim who is a minor" means a person under the age of  
20 eighteen against whom any of the following offenses have been committed:

21 (a) Any homicide or any felony offense defined or enumerated in R.S.  
22 14:2(B).

23 (b) Any ~~sexual~~ sex offense or human trafficking-related offense as defined  
24 or enumerated in R.S. 46:1844(W).

1 (c) The offenses of vehicular negligent injuring and first degree vehicular  
2 negligent injuring.

3 ~~(2)~~(4) "Critical stage" means any judicial proceeding at which there is a  
4 disposition of the charged offense or a lesser offense, or a sentence imposed pursuant  
5 thereto.

6 ~~(3)~~(5) "Designated family member" means a family member or legal  
7 guardian of the victim who is a minor, a homicide victim, or a victim who is unable  
8 to exercise his rights ~~hereunder~~ pursuant to this Chapter due to a serious disability.  
9 The designated family member shall be selected by a majority of the victim's family  
10 members, and shall be afforded all of the rights accruing to victims under this  
11 Chapter. A substitution of the designated family member may be made upon  
12 agreement by the majority of the victim's family members. In specific cases, the  
13 court or the district attorney may allow more than one designated family member.

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

16 (7) "Healthcare provider" has the same meaning as provided in R.S.  
17 40:1216.1.

18 ~~(4)~~(8) "Inmate" means a person convicted of a felony.

19 ~~(5)~~(9) "Judicial agency" means the district court and officers thereof,  
20 including the judge, the prosecutor, and the clerk of court, the Crime Victims  
21 Reparations Board, the Department of Public Safety and Corrections, and the  
22 division of probation and parole.

23 ~~(6)~~(10) "Judicial proceeding" means any contradictory proceeding held in  
24 open court.

25 ~~(7)~~(11) "Law enforcement agency" means the sheriff, constable, or police  
26 force as defined by law, and the Department of Public Safety and Corrections.

27 ~~(8)~~(12) "Registration" means the completion of a form which is filed with  
28 the law enforcement agency investigating the offense of which the person is a victim,  
29 as specified in R.S. 46:1844(T), which shall include an address, email address, and  
30 telephone number at which the victim or designated family member may be notified.

1           Such forms shall be promulgated by the Louisiana Commission on Law Enforcement  
2           and Administration of Criminal Justice in accordance with R.S. 46:1844(R).

3                     (13) "Sexual assault advocate" has the same meaning as provided in R.S.  
4                     46:2186.

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

7                     ~~(9)~~(15) "Victim" means a person against whom any of the following offenses  
8           have been committed:

9                     (a) Any homicide, or any felony offense defined or enumerated in R.S.  
10           14:2(B).

11                    (b) Any ~~sexual~~ sex offense or human trafficking-related offense as defined  
12                    or enumerated in R.S. 46:1844(W).

13                    (c) The offenses of vehicular negligent injuring and first degree vehicular  
14           negligent injuring.

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

18                    ~~(10)~~(16) "Victim notice and registration form" means a form promulgated  
19           by the Louisiana Commission on Law Enforcement and Administration of Criminal  
20           Justice in accordance with R.S. 46:1844(R) and distributed by a judicial or law  
21           enforcement agency on which a victim or witness or a family member of a victim or  
22           witness may indicate a request that he be afforded the rights prescribed in this  
23           Chapter or other criminal statutes relative to a crime of which he or a family member  
24           was a victim or witness.

25                    (17) "Victim of sexual assault" means any natural person who presents as a  
26                    victim of sexual assault as defined in R.S. 46:2184, or the family member of such  
27                    person if the victim is under eighteen years of age, incompetent, or deceased,  
28                    provided that in no instance does the term include a family member identified as the  
29                    perpetrator.



1 M. Victims' right to seek restitution.

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

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

12 \* \* \*

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

24 \* \* \*

25 §1845. Additional rights for victims of sexual assaults; notification of rights

26 A.(1) The rights provided to victims of sexual assault contained in this  
27 Section attach whether a victim seeks the assistance of either a law enforcement  
28 official or a healthcare provider. A victim of sexual assault retains all the rights of  
29 these provisions regardless of whether the victim receives a forensic medical  
30 examination or whether a sexual assault collection kit is administered.

1           (2) Notwithstanding any other provision of law to the contrary, nothing in  
2           this Section shall be construed to negate or impair any provision of law relative to  
3           the mandatory reporting of crimes against children under the age of eighteen years  
4           or to negate or impair the investigation or prosecution of any crime against children  
5           under the age of eighteen.

6           B. A victim of sexual assault has the right to be notified of and to request the  
7           presence of a sexual assault advocate during the administration of a forensic medical  
8           examination or a scheduled interview by a law enforcement official if a sexual  
9           assault advocate is reasonably available. Nothing in this Section shall be construed  
10          to prohibit the conducting of a forensic medical examination or an interview by a law  
11          enforcement official in the absence of a sexual assault advocate.

12          C.(1) The district attorney, prior to trial, shall make reasonable efforts to  
13          interview the victim or designated family member to determine the facts of the case  
14          and whether the victim or the family is requesting restitution.

15          (2) All law enforcement and judicial agencies shall provide a private setting  
16          for conducting all interviews of a victim of sexual assault. "Private setting" shall  
17          mean an enclosed room from which the occupants are not visible or otherwise  
18          identifiable and whose conversations cannot be heard from outside the room. Only  
19          those persons directly and immediately related to the interviewing of the victim,  
20          specifically the victim, a social worker, psychologist, or other professional, a victim  
21          advocate designated by the sheriff's office or a representative from a not-for-profit  
22          victim service organization including but not limited to rape crisis centers, sexual  
23          assault centers, domestic violence advocacy groups, and alcohol abuse or substance  
24          abuse groups providing emotional support to the victim, shall be present unless the  
25          victim requests the exclusion of such person from the interview, and when  
26          appropriate, the parent or parents of the victim.

27          (3) The victim of sexual assault and the victim's family may refuse any  
28          requests for interviews with the attorney for the defendant or any employee or agent  
29          working for the attorney for the defendant. If the victim of sexual assault is a minor,  
30          the parent or guardian of the victim may refuse to permit the minor to be interviewed

1           by the attorney for the defendant or any employee or agent working for the attorney  
 2           for the defendant. Before any victim of sexual assault may be subpoenaed to testify  
 3           on behalf of a defendant at any pretrial hearing, the defendant shall show good cause  
 4           at a contradictory hearing with the district attorney why the subpoena should be  
 5           issued. Willful disregard of the rights of victims and witnesses as provided in this  
 6           Paragraph may be punishable as contempt of court.

7           D. The failure to comply with the provisions of this Section shall not affect  
 8           the admissibility of any evidence in a civil or criminal proceeding, nor shall any  
 9           sentence, plea, conviction, or other final disposition be invalidated due to the failure  
 10          to comply with the provisions of this Section. Nothing in this Section shall be  
 11          construed as creating a cause of action by or on behalf of any person for an award  
 12          of costs or attorney fees, for the appointment of counsel for a victim, or for any cause  
 13          of action for compensation or damages against the state of Louisiana, a political  
 14          subdivision, a public agency, or a court, or any officer, employee, or agent thereof.  
 15          Nothing in this Section precludes filing for a writ of mandamus as provided in the  
 16          Code of Civil Procedure to compel the performance of a ministerial duty required by  
 17          law.

18          Section 2. R.S. 15:260 is hereby amended and reenacted to read as follows:

19          §260. Production of certain records of a victim ~~under age eighteen~~; conditions

20                 A. If the defendant is charged with a violation of R.S. 14:93 or any provision  
 21                 of Subpart C of Part II, Subpart B of Part IV, or Subpart A(1) or A(4) of Part V of  
 22                 Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950, and the victim was  
 23                 under the age of eighteen at the time of the offense, R.S. 14:93.2.3, or sex offense or  
 24                 human trafficking-related offense as defined in or enumerated in R.S. 46:1844(W),  
 25                 a subpoena or court order compelling the production of medical, psychological,  
 26                 school, or other records pertaining to the victim shall not be issued upon request of  
 27                 the defendant unless the subpoena or court order identifies the records sought with  
 28                 particularity and is reasonably limited as to subject matter, and the court finds, after  
 29                 a contradictory hearing with the state, that the requested records are likely to be

1 relevant and admissible at trial and are not sought for the purpose of harassing the  
2 victim.

3 B. Any records obtained by the defendant or his attorney without full  
4 compliance with the provisions of this Section shall be inadmissible in any criminal  
5 proceeding.

6 C. The district attorney shall provide written notice to the victim, or counsel  
7 for the victim if applicable, of the contradictory hearing required by the provisions  
8 of this Section.

9 D. Willful violation of the provisions of this Section may be punishable as  
10 contempt of court.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_