

DIGEST

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SB 146 Reengrossed

2019 Regular Session

Morrell

Present law provides that if the testimony of a witness is essential to the prosecution or the defense, and it may become impracticable to secure the presence of the person by subpoena, then upon motion of the district attorney or a defendant, a judge is to issue a warrant for the arrest of the witness. Present law further provides that the witness is to be arrested and held in the parish jail or other suitable place as designated by the court, until he gives an appearance bond as provided for defendants admitted to bail, or until his testimony has been given or dispensed with.

Proposed law provides an exception to present law for material witness warrants for victims of sex offenses and intimate partner violence.

Proposed law provides that in certain misdemeanor prosecution cases, defined as a sex offense under present law, or the present law crimes of battery of a dating partner, domestic abuse battery, or domestic abuse aggravated assault, a judge shall not order a material witness warrant to secure the presence of a victim.

Proposed law provides that in certain felony prosecution cases, defined as a sex offense under present law, or the present law crimes of battery of a dating partner, domestic abuse battery, or domestic abuse aggravated assault against a current or former spouse, a judge shall not order a material witness warrant solely for the purpose of securing the attendance or testimony of a victim unless an applicant presents an affidavit to the judge attesting to all of the following:

- (1) Efforts made by the applicant to secure the victim's appearance in court.
- (2) The victim's testimony is essential to the prosecution or defense of a criminal proceeding.
- (3) The affidavit is filed in compliance with present law.

Proposed law provides that only a qualified victim for which a material witness warrant is sought pursuant to proposed law shall have standing to raise the proposed law protections provided in proposed law.

Proposed law provides that when the appearance of a secured victim occurs, immediate notification must be made to the judge who signed the warrant, the duty judge or magistrate as well as the applicant who requested the order.

Proposed law provides that upon notification that the victim has been secured, the victim shall be brought before the judge pursuant to the following:

- (1) Within the jurisdiction of the issued material warrant, the secured victim shall be brought before the judge on the next scheduled business day.
- (2) Outside the jurisdiction of the issued material warrant, the secured victim shall be brought before the judge as soon as practically possible.

Proposed law provides that the judge shall explore all available alternatives to incarceration to ensure the victim's appearance in court, and be notified of certain rights, including a right to retain or apply for counsel.

Proposed law provides a presumption that the victim be released on his own recognizance.

Proposed law provides certain conditions of release for such secured victim such as bond supervision, GPS monitoring, treatment facilities, shelters, lodging, or services offered by community partners or victim witness assistance coordinators.

Proposed law provides that the judge may order that the secured victim be placed in protective custody as an alternative to incarceration. If possible, a victim shall not be incarcerated in the same institution as the defendant.

Proposed law provides for a reporting system of information regarding material witness warrant data.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 15:257; Adds R.S. 15:257.1 and 625)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Makes proposed law applicable to both the prosecution and the defense instead of only applicable to the prosecution.

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Deletes the provision which prohibits the arrest and incarceration of victims of domestic violence and sexual assault who refuse to testify against their abusers.
2. Adds a provision to provide limitations of arrest and incarceration of victims of domestic violence and sexually oriented criminal offenses who refuse to testify against their abusers.
3. Makes technical corrections.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the reengrossed bill:

1. Specify that a judge shall not order a material witness warrant solely to secure the attendance or testimony of a victim listed in the indictment or bill of information in a felony prosecution.
2. Specify that "dating partner" for purposes of proposed law has the same meaning as provided in the present law Protection from Dating Violence Act.
3. Change certain references in proposed law from "witness" to "victim".
4. Provide that only a qualified victim for which a material witness warrant is being sought pursuant to proposed law shall have standing to raise the protections provided in proposed law.
5. Provide that a victim who is indigent shall be authorized to apply for counsel for a bond hearing, instead of a providing the victim with a right to appointed counsel.
6. Change references in proposed law from "criminal justice agency" to "district attorney or other prosecution agency".

7. Change references in proposed law from "Department of Justice" to "Louisiana Commission on Law Enforcement and Administration of Criminal Justice".
8. With regard to the required reporting of information about the number of material witness warrants applied for, specify that the report shall only include those warrants that are applied for pursuant to proposed law and have been filed into the record of any criminal prosecution proceeding within their jurisdiction.
9. Remove the requirement that the report include the name and contact information of agencies that have failed to submit reports required under proposed law.
10. Make technical corrections.