### 2019 Regular Session

#### SENATE BILL NO. 146

#### BY SENATORS MORRELL, BISHOP AND CARTER AND REPRESENTATIVES BACALA, DUPLESSIS, JIMMY HARRIS, JAMES, LEGER AND MARCELLE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1	AN ACT
2	To amend and reenact R.S. 15:257 and to enact R.S. 15:257.1 and 625, relative to
3	compulsory process; to provide limitations of arrest and incarceration of victims of
4	domestic violence and sexually oriented criminal offenses who refuse to testify
5	against their abusers; and to provide for related matters.
6	Be it enacted by the Legislature of Louisiana:
7	Section 1. R.S. 15:257 is hereby amended and reenacted and R.S. 15:257.1 and 625
8	are hereby enacted to read as follows:
9	§257. Placing material witness under bond; exception for victims
10	Whenever A. Except as provided in R.S. 15:257.1, whenever it shall
11	appear, upon motion of the district attorney or upon motion of a defendant supported
12	by his affidavit, that the testimony of any witness is essential to the prosecution or
13	the defense, as the case may be, and it is shown that it may become impracticable to
14	secure the presence of the person by subpoena, a judge, as defined in Article 931 of
15	the Code of Criminal Procedure, shall issue a warrant for the arrest of the witness.
16	The witness shall be arrested and held in the parish jail, or such other suitable place
17	as shall be designated by the court, until he gives an appearance bond as provided for
18	defendants when admitted to bail, or until his testimony shall have been given in the
19	cause or dispensed with.
20	§257.1. Exception for material witness warrants for victims of sex offenses and
21	intimate partner violence; legislative intent
22	A. The legislature hereby finds and declares that domestic violence and
23	sexual assault are major public health problems and violations of human rights.
24	The legislature further finds that in order to be in compliance with the Violence

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## **ENROLLED**

1	Against Women Act, this statute is meant to discourage the use of material
2	witness warrants and enforce the premise that the use of material witness
3	warrants for victims of intimate partner violence or sex crimes is an
4	extraordinary measure that should be used only when absolutely necessary and
5	that any incarceration shall occur only after all other remedies have been
6	exhausted in order to prevent further victimization and trauma to the victims.
7	<b>B.</b> A judge shall not order a material witness warrant to secure the
8	presence of a victim listed in the indictment or bill of information in a
9	misdemeanor prosecution in cases where the instituted charges are one of a sex
10	offense under R.S. 15:541 or a listed victim in the indictment or bill of
11	information of a misdemeanor offense committed under R.S. 14:34.9 (battery
12	of a dating partner) or R.S. 14:35.3 (domestic abuse battery) that is a pending
13	matter before a court.
14	C.(1) A judge shall not order a material witness warrant to secure the
15	presence of a victim listed in the indictment or bill of information solely for the
16	purpose of securing the attendance or testimony of a victim listed in a felony
17	prosecution in cases where the instituted charges are either:
18	(a) A sex offense under R.S. 15:541.
18 19	<u>(a) A sex offense under R.S. 15:541.</u> (b) An offense committed under R.S. 14:34.9 (battery of a dating
19	(b) An offense committed under R.S. 14:34.9 (battery of a dating
19 20	(b) An offense committed under R.S. 14:34.9 (battery of a dating partner), R.S. 14:35.3 (domestic abuse battery), R.S. 14:37.7 (domestic abuse
19 20 21	(b) An offense committed under R.S. 14:34.9 (battery of a dating partner), R.S. 14:35.3 (domestic abuse battery), R.S. 14:37.7 (domestic abuse aggravated assault), or R.S. 14:34.9.1 (aggravated assault upon a dating
19 20 21 22	(b) An offense committed under R.S. 14:34.9 (battery of a dating partner), R.S. 14:35.3 (domestic abuse battery), R.S. 14:37.7 (domestic abuse aggravated assault), or R.S. 14:34.9.1 (aggravated assault upon a dating partner).
19 20 21 22 23	(b) An offense committed under R.S. 14:34.9 (battery of a dating partner), R.S. 14:35.3 (domestic abuse battery), R.S. 14:37.7 (domestic abuse aggravated assault), or R.S. 14:34.9.1 (aggravated assault upon a dating partner). (c) A case where the victim listed in the indictment or bill of information
19 20 21 22 23 24	(b) An offense committed under R.S. 14:34.9 (battery of a dating partner), R.S. 14:35.3 (domestic abuse battery), R.S. 14:37.7 (domestic abuse aggravated assault), or R.S. 14:34.9.1 (aggravated assault upon a dating partner). (c) A case where the victim listed in the indictment or bill of information of the current felony charge pending before the court is the current or former
19 20 21 22 23 24 25	(b) An offense committed under R.S. 14:34.9 (battery of a dating partner), R.S. 14:35.3 (domestic abuse battery), R.S. 14:37.7 (domestic abuse aggravated assault), or R.S. 14:34.9.1 (aggravated assault upon a dating partner). (c) A case where the victim listed in the indictment or bill of information of the current felony charge pending before the court is the current or former spouse or the current or former dating partner as defined by R.S. 46:2151,
19 20 21 22 23 24 25 26	(b) An offense committed under R.S. 14:34.9 (battery of a dating partner), R.S. 14:35.3 (domestic abuse battery), R.S. 14:37.7 (domestic abuse aggravated assault), or R.S. 14:34.9.1 (aggravated assault upon a dating partner). (c) A case where the victim listed in the indictment or bill of information of the current felony charge pending before the court is the current or former spouse or the current or former dating partner as defined by R.S. 46:2151, regardless of whether or not the individuals reside in the same household that
19 20 21 22 23 24 25 26 27	(b) An offense committed under R.S. 14:34.9 (battery of a dating partner), R.S. 14:35.3 (domestic abuse battery), R.S. 14:37.7 (domestic abuse aggravated assault), or R.S. 14:34.9.1 (aggravated assault upon a dating partner). (c) A case where the victim listed in the indictment or bill of information of the current felony charge pending before the court is the current or former spouse or the current or former dating partner as defined by R.S. 46:2151, regardless of whether or not the individuals reside in the same household that is a pending matter before a court.

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1	presents an affidavit to the judge attesting to all of the following:
2	(a) The efforts made by the applicant to secure the victim's appearance
3	<u>in court.</u>
4	(b) That the testimony of the victim is essential to the prosecution or
5	defense of a criminal proceeding.
6	(c) The filing of the affidavit made pursuant to this Section is filed in
7	compliance with R.S. 46:1844(W).
8	(3) Only a qualified victim for which a material witness warrant is being
9	sought pursuant to this Section shall have standing to raise the protections
10	provided in this Section.
11	<b>D.(1)</b> When a witness who is a victim of any of the offenses enumerated
12	in Subsection B or C of this Section is secured pursuant to a material witness
13	warrant issued by a judge, notification shall immediately be made to the judge
14	who signed the warrant and the duty judge or magistrate, as well as the
15	applicant who requested the order. Upon notification that the victim has been
16	secured, the victim shall be brought before a judge pursuant to the following:
17	(a) Inside of the jurisdiction where the material warrant was issued, the
18	victim shall be brought before a judge on the next scheduled business day.
19	(b) Outside of the jurisdiction in which the warrant was issued, the
20	victim shall be brought before the judge as soon as practically possible.
21	(2) Once the victim is brought before a judge, the judge shall explore all
22	available alternatives to incarceration to ensure the victim's appearance in
23	<u>court.</u>
24	(3) The victim shall be notified of the right to retain counsel or, if
25	indigent, shall be authorized to apply for counsel for a bond hearing.
26	<b>E.(1)</b> There shall be a presumption that a victim, as defined in Subsection
27	C of this Section, be released on his own recognizance.
28	(2) The court shall consider all least restrictive means to ensure the
29	victim's appearance in court pursuant to a subpoena, including but not limited
30	to imposing conditions of release such as:

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1	(a) Bond supervision or GPS monitoring to be paid by the applicant of
2	the warrant.
3	(b) Treatment facilities, shelters, or lodging paid for by the applicant of
4	the warrant.
5	(3) The court shall notify the victim of services offered by community
6	partners or victim witness assistance coordinators.
7	F.(1) The court shall exhaust all alternatives prior to ordering the
8	incarceration of a victim as defined in Subsection C of this Section.
9	(2) If a judge determines there are no alternatives that will secure the
10	victim's testimony, then the judge may order that the victim be placed in
11	protective custody. If practically possible, a victim shall not be incarcerated in
12	the same institution as the defendant.
13	<b>G. Nothing in this Section shall be construed to limit the authority of the</b>
14	district attorney or defendant from securing a witness outside the jurisdiction
15	of the court. Nothing in this Section shall be construed to create a release
16	mechanism for a victim if the victim is incarcerated for any reason unrelated
17	to a material witness warrant sought under this Section.
18	* * *
19	<u>§625. Material witness warrant data; reporting</u>
20	A. By February fifteenth of each year, each district attorney or other
21	prosecution agency shall report all of the following information for the prior
22	calendar year to the Louisiana Commission on Law Enforcement and
23	Administration of Criminal Justice:
24	(1) The number of material witness warrants applied for pursuant to this
25	Section which has been filed into the record of any criminal prosecution
26	proceeding within their jurisdiction.
27	(2) The number of material witness warrants signed by a judge.
28	(3) The number of material witness warrants executed.
29	(4) The number of victims as defined in R.S. 15:257.1(C) incarcerated
30	pursuant to a material witness warrant.

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1	<b>B.</b> By March first of each year, the Louisiana Commission on Law
2	Enforcement and Administration of Criminal Justice shall transmit the
3	information required in Subsection A of this Section to the chairman of the
4	Senate Committee on Judiciary C and the chairman of the House Committee
5	on Judiciary and shall publish the information on the website of the Louisiana
6	Commission of Law Enforcement and Administration of Criminal Justice.
7	Section 2. This Act shall become effective upon signature by the governor or, if not
8	signed by the governor, upon expiration of the time for bills to become law without signature
9	by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
10	vetoed by the governor and subsequently approved by the legislature, this Act shall become
11	effective on the day following such approval.

# PRESIDENT OF THE SENATE

## SPEAKER OF THE HOUSE OF REPRESENTATIVES

# GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: