# SLS 22RS-412

### ORIGINAL

2022 Regular Session

SENATE BILL NO. 148

BY SENATOR MIZELL

CRIMINAL JUSTICE. Provides for post-conviction relief for victims of human trafficking. (gov sig)

1	AN ACT
2	To amend and reenact Code of Criminal Procedure Art. 987 and R.S. 14:46.2(A)(1), (C)(1)
3	and (3)(b) and (f), and (D), to enact Code of Criminal Procedure Art. 987.1, R.S.
4	14:46.2(C)(3)(k) and (l), relative to human trafficking; to provide that convictions
5	for certain offenses may be set aside when the defendant is a victim of human
6	trafficking; to provide relative to expungement of records of arrest and conviction
7	for certain offenses related to human trafficking; to provide for immunity from
8	prosecution for victims of human trafficking; and to provide for related matters.
9	Be it enacted by the Legislature of Louisiana:
10	Section 1. Code of Criminal Procedure Art. 987 is hereby amended and reenacted
11	and Code of Criminal Procedure Art. 987.1 is hereby enacted to read as follows:
12	Art. 987. Motion to set aside conviction and dismiss prosecution; rule to show
13	cause; order of dismissal forms to be used
14 15 16	"STATE OF LOUISIANA JUDICIAL DISTRICT FOR THE PARISH OF
17 18 19 20 21 22 23	No.: Division: "" State of Louisiana vs

Page 1 of 7 Coding: Words which are struck through are deletions from existing law; words in **boldface type and underscored** are additions.

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ORIGINA	٩L
SB NO. 1	48

1	NOW	INTO HONORABLE COURT, comes
2		Defendant, OR
3		Defendant through undersigned Counsel,
4	who m	noves that the conviction pursuant to Louisiana Code of Criminal Procedure
5		Article 894(B) Misdemeanors, OR
6		Article 893(E) Felonies, OR
7		Article 987.1 Offenses related to human trafficking
8	in the a	above numbered case be set aside and that the prosecution dismissed in accordance with the Code
9	of Crir	ninal Procedure in that:
10		the <u>The</u> period of the deferred sentence has run and petitioner has successfully completed the
11		terms of his probation., OR
12		The defendant was convicted of an offense related to human trafficking.
13		
14	The m	over is further identified below:
15	DOCK	XET NUMBER:
16	CHAR	CGE:
17	DATE	OF ARREST:
18	ARRE	STING AGENCY:
19	CITY/	PARISH OF ARREST:
20		The Mover prays that, after a contradictory hearing with the District Attorney's Office, the Court
21	order t	the above numbered case be set aside and that the prosecution dismissed in accordance with the
22	Code o	of Criminal Procedure.
23 24		Respectfully submitted,
24 25 26		Signature of Attorney for Mover/Defendant
27 28		Attorney for Mover/Defendant Name
29		Automety for Wover/Derendant Ivanie
30 31 32 33 34 35 36		Attorney's Bar Roll No.
33 34		Address
35		
37 38		City, State, ZIP Code
39 40		Telephone Number
41 42		
43 44		If not represented by counsel:
45 46		Signature of Mover/Defendant
47 48		Signature of Wover/Defendant
49 50		Mover/Defendant Name
51		

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 $\begin{array}{c} 29\\ 30\\ 31\\ 32\\ 33\\ 34\\ 35\\ 36\\ 37\\ 38\\ 39\\ 40\\ 41\\ 43\\ 445\\ 46\\ 47\\ 48\\ 49\\ 50\\ 51\\ \end{array}$ 

ORIGINAL
SB NO. 148

City, State, ZIP Code

Telephone Number

Address

#### STATE OF LOUISIANA JUDICIAL DISTRICT FOR THE PARISH OF

No.:		Division: "	
	State of Louisiana		
	vs.		
	RULE TO SHOW CAUSE	_	
	IT IS HEREBY ORDERED, that the District Attorney show cause		-
	, 20, ato'clockm why the foregoin	ng motion should n	ot b
granted		•	
	THUS ORDERED AND SIGNED this day of	, 20	8
	, Louisiana,		
	JUDGE		
PLEAS	SE SERVE:		
1.	District Attorney:		
2.	Attorney for Defendant and/or Defendant		
	STATE OF LOUISIANA JUDICIAL DISTRICT FOR THE PARISH OF		
No.:		Division: "	
	State of Louisiana		
	vs.		
	ORDER OF DISMISSAL		
	Considering the Motion to Set Aside Conviction and Dismiss Prosecutio	n, the hearing cond	ucte
on the r	representation of the State of Louisiana of its consent hereto, and that there	e is no opposition fo	r an
good ca	ause appearing herein;		
	IT IS ORDERED, ADJUDGED AND DECREED that this conviction	ion is set aside an	d th
prosecu	ation dismissed for purposes of expungement.		
	THUS ORDERED AND SIGNED this day of	, 20	a
	, Louisiana.		

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1 2 3 4 5 6 7	JUDGE
5 4 5	PLEASE SERVE:
5 6 7	1. District Attorney:
8	2. Attorney for Defendant and/or Defendant"
9	Art. 987.1. Motion to set aside conviction of certain offenses related to human
10	trafficking; expungement and sealing of record of arrest and
11	<u>conviction</u>
12	A. A motion to set aside a conviction pursuant to the provisions of this
13	Article may be filed and served upon the district attorney at any time following
14	a conviction involving the offenses of prostitution pursuant to R.S. 14:82,
15	prostitution by massage pursuant to R.S. 14:83.3 or 83.4, crime against nature
16	pursuant to R.S. 14:89, or crime against nature by solicitation pursuant to R.S.
17	14:89.2, or any other nonviolent offense, when the defendant's participation in
18	the offense was a result of having been a victim of human trafficking under R.S.
19	14:46.2, trafficking of children for sexual purposes under R.S. 14:46.3, or a
20	victim of a severe form of trafficking under the federal Trafficking Victims
21	Protection Act, 22 U.S.C. 7101 et seq.
22	<b>B.</b> The motion shall be in writing, shall describe the supporting evidence
23	with particularity, and shall include copies of any documents showing that the
24	defendant is entitled to relief under this Article.
25	<b><u>C. The motion shall not be denied without a contradictory hearing unless</u></b>
26	it appears on the face of the motion that, as a matter of law, the defendant is not
27	entitled to the relief sought.
28	<b>D.</b> The court shall grant the motion if it finds by a preponderance of the
29	evidence that the violation was a result of the defendant having been a victim
30	of human trafficking. Documentation of the defendant's status as a victim of
31	human trafficking provided by a federal, state, or local government agency shall
32	create a presumption that the defendant's conviction was obtained as a result
33	of having been a victim of human trafficking. However, such documentation
34	shall not be required to grant a motion under this Article.

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1	<b>E. If the motion is granted, the court shall order the expungement and</b>
2	sealing, without cost to the defendant, of the record of arrest and conviction.
3	The court shall further order that copies of all records and files related to the
4	defendant's arrest, citation, investigation, charge, conviction, probation, and
5	sentence for the offense be provided to the defendant without cost.
6	Section 2. R.S. 14:46.2(A)(1), (C)(1) and (3)(b) and (f), and (D) are hereby amended
7	and reenacted and R.S. 14:46.2(C)(3)(k) and (l) are hereby enacted to read as follows:
8	§46.2. Human trafficking
9	A. It shall be unlawful:
10	(1)(a) For any person to knowingly recruit, harbor, transport, provide, solicit,
11	receive, isolate, entice, obtain, patronize, procure, purchase, hold, restrain,
12	induce, threaten, subject, or maintain the use of another person through fraud,
13	force, or coercion to provide services or labor.
14	(b) For any person to knowingly recruit, harbor, transport, provide, solicit,
15	sell, purchase, patronize, procure, hold, restrain, induce, threaten, subject,
16	receive, isolate, entice, obtain, or maintain the use of a person under the age of
17	twenty-one years for the purpose of engaging in commercial sexual activity
18	regardless of whether the person was recruited, harbored, transported, provided,
19	solicited, sold, purchased, received, isolated, enticed, obtained, or maintained
20	through fraud, force, or coercion. It shall not be a defense to prosecution for a
21	violation of the provisions of this Subparagraph that the person did not know the age
22	of the victim or that the victim consented to the prohibited activity.
23	* * *
24	C. For purposes of this Section:
25	(1) "Commercial sexual activity" means any sexual act performed or
26	conducted when anything of value has been given, promised, or received by any
27	person, directly or indirectly, including the production of pornography.
28	* * *
29	(3) "Fraud, force, or coercion" shall include but not be limited to any of the

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1	following:
2	* * *
3	(b) Physically restraining, <b>isolating, confining,</b> or threatening to physically
4	restrain <u>, isolate, or confine</u> another person.
5	* * *
6	(f) The actual or threatened destruction, concealment, removal, withholding,
7	confiscation, or possession of any actual or purported passport or other immigration
8	document, or any other actual or purported government identification document, of
9	another person.
10	* * *
11	(k) Exposing or threatening to expose any fact or information that would
12	subject an individual to criminal or immigration proceedings.
13	(1) Causing or threatening to cause financial harm to an individual or
14	using financial control over an individual.
15	* * *
16	D. It shall not be a defense to prosecution for a violation of this Section that
17	the person being recruited, harbored, transported, provided, solicited, received,
18	isolated, patronized, procured, purchased, enticed, obtained, or maintained is
19	actually a law enforcement officer or peace officer acting within the official scope
20	of his duties.
21	* * *
22	Section 3. This Act shall become effective upon signature by the governor or, if not
23	signed by the governor, upon expiration of the time for bills to become law without signature
24	by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
25	vetoed by the governor and subsequently approved by the legislature, this Act shall become
26	effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Whitney Kauffeld.

SB 148 Original

### DIGEST 2022 Regular Session

Mizell

<u>Present law</u> provides definitions and penalties for the crimes of human trafficking and trafficking of children for sexual purposes.

Proposed law retains present law.

<u>Present law</u> provides that a victim of the crime of trafficking of children for sexual purposes cannot be prosecuted for crimes committed as a direct result of being trafficked. <u>Present law</u> further provides that any child determined to be a victim of the crime of trafficking of children for sexual purposes is eligible for specialized services for sexually exploited children.

Proposed law retains present law.

<u>Proposed law</u> provides that a motion to set aside a conviction may be filed and served upon the district attorney at any time following a conviction involving the <u>present law</u> crimes of prostitution, prostitution by massage, crime against nature, or crime against nature by solicitation, or any other nonviolent offense, when the defendant's participation in the crime was a result of having been a victim of human trafficking or trafficking of children for sexual purposes under <u>present law</u>, or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act. <u>Proposed law</u> further provides that the motion must be in writing, describe the supporting evidence with particularity, and include copies of any documents showing that the defendant is entitled to relief under <u>proposed law</u>. <u>Proposed law</u> further provides that the motion cannot be denied without a contradictory hearing, unless it appears on the face of the motion that the defendant is not entitled to the relief sought as a matter of law.

<u>Proposed law</u> provides that the court must grant the motion to set aside if the court finds by a preponderance of evidence that the crime was committed as a result of the defendant having been a victim of human trafficking. <u>Proposed law</u> further provides that documentation of the defendant's status as a victim of human trafficking provided by a federal, state, or local government agency creates a presumption that the defendant's conviction was obtained as a result of having been a victim of human trafficking, but such documentation is not required in order to grant the motion to set aside. <u>Proposed law</u> further provides that if the motion is granted, the court is to order the expungement and sealing, without cost to the defendant, of the record of arrest and conviction, including all records and files related to the defendant's arrest, citation, investigation, charge, conviction, probation, and sentence.

<u>Present law</u> provides forms for the motion to set aside conviction and dismiss prosecution provided for by <u>present law</u>.

<u>Proposed law</u> retains <u>present law</u> and adds provisions to the forms relative to the <u>proposed</u> <u>law</u> motion to set aside conviction of certain offenses related to human trafficking.

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

(Amends C.Cr.P. Art. 987 and R.S. 14:46.2(A)(1), (C)(1) and (3)(b) and (f), and (D); adds C.Cr.P. Art. 987.1, R.S. 14:46.2(C)(3)(k) and (l))