

2022 Regular Session

SENATE BILL NO. 148

BY SENATORS MIZELL, ABRAHAM, BARROW, BERNARD, BOUIE, CARTER, CATHEY, CLOUD, CONNICK, CORTEZ, FESI, FIELDS, FOIL, HENRY, HEWITT, JACKSON, LAMBERT, MCMATH, MILLIGAN, FRED MILLS, ROBERT MILLS, MORRIS, PETERSON, POPE, PRICE, REESE, SMITH, STINE, TALBOT, WARD, WHITE AND WOMACK

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. 983(H) and (I) and R.S.

3 14:46.2(A)(1), (C)(1) and (3)(b) and (f), and (D), to enact Code of Criminal

4 Procedure Art. 983(J) and 997, and R.S. 14:46.2(C)(3)(k) and (l), relative to human

5 trafficking; to provide relative to expungement of records of arrest and conviction

6 for certain offenses related to human trafficking; to provide for immunity from

7 prosecution for victims of human trafficking; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Criminal Procedure Art. 983(H) and (I) are hereby amended and  
10 reenacted and Code of Criminal Procedure Art. 983(J) and 997 are hereby enacted to read  
11 as follows:

12 Art. 983. Cost of expungement of a record; fees; collection; exemptions;  
13 disbursements

14 \* \* \*

15 H. Human trafficking victim request for certification and application for  
16 expungement.

17 (1) An applicant for the expungement of a record of offense who was a

1 victim of human trafficking, in accordance with R.S. 14:46.2, may request a  
2 certification from the prosecuting authority that the offense for which the  
3 expungement is sought was committed, in substantial part, as the result of the  
4 applicant being a victim of "human trafficking" in accordance with R.S.  
5 14:46.2.

6 (2) To obtain certification, the applicant has the burden of establishing  
7 by a preponderance of the evidence to the prosecuting authority that the offense  
8 was committed, in substantial part, as the result of the applicant being a victim  
9 of human trafficking in accordance with R.S. 14:46.2.

10 (3) The certification shall be prima facie evidence that similar eligible  
11 crimes committed within other Louisiana jurisdictions during the time period  
12 the applicant was a victim of human trafficking were committed, in substantial  
13 part, as the result of the applicant being a victim of human trafficking in  
14 accordance with R.S. 14:46.2.

15 (4) All applicable time delays pertaining to expungement provided by  
16 Code of Criminal Procedure Articles 977 and 978 shall be waived when the  
17 certification is presented to the clerk of court with the application for  
18 expungement.

19 (5) An applicant for the expungement of a record of offense who was a  
20 victim of human trafficking, in accordance with R.S. 14:46.2, shall not be  
21 required to pay any fees relative to the application for expungement to the clerk  
22 of court, the Louisiana Bureau of Criminal Identification and Information, the  
23 sheriff, the district attorney, or any other agency.

24 (6) Utilization of the process outlined within this Subsection shall not  
25 preclude any applicant from seeking additional expungement to which the  
26 applicant may be entitled, in accordance with law.

27 (7) The Louisiana District Attorneys Association shall annually submit  
28 a report to the legislature, no later than February first, that includes the  
29 number of applications for, denials of, and approvals of the certification

1 **provided for by this Subsection for the prior year.**

2 **I.** If an application for an expungement of a record includes two or more  
3 offenses arising out of the same arrest, including misdemeanors, felonies, or both,  
4 the applicant shall be required to pay only one fee as provided for by this Article.

5 **I.J.** Notwithstanding any provision of law to the contrary, an applicant for the  
6 expungement of a record, other than as provided in Paragraphs F and G of this  
7 Article, may proceed in forma pauperis in accordance with the provisions of Code  
8 of Civil Procedure Article 5181 et seq.

9 \* \* \*

10 **Art. 997. Certification of Human Trafficking Victim Status**

11 **STATE OF LOUISIANA**

12 **JUDICIAL DISTRICT FOR THE PARISH OF**  
13 \_\_\_\_\_

14  
15 **NO.:** \_\_\_\_\_

**DIVISION:** \_\_\_\_\_

16  
17 **STATE OF LOUISIANA**

18 **vs.**  
19 \_\_\_\_\_

20  
21 **CERTIFICATION OF HUMAN TRAFFICKING VICTIM STATUS**

22  
23 **In accordance with the provisions of Louisiana Code of Criminal Procedure**  
24 **Article 983, the Office of the District Attorney has reviewed and determined that one,**  
25 \_\_\_\_\_,  
26 \_\_\_\_\_,

27 **RACE/ GENDER:** \_\_\_\_\_ **DOB:** \_\_\_\_\_,

28 **SSN:** \_\_\_\_\_, **has established by a preponderance of the**

29 **evidence proof of status as a victim of human trafficking in accordance with the**

1 **provisions of R. S. 14:46.2, for the following offense(s), detailed specifically as follows:**

2 *(If more than one offense, each relevant offense must be specifically listed in the*  
3 *following format)*

4  
5 **OFFENSE:** \_\_\_\_\_

6 **DOCKET NO:** \_\_\_\_\_

7 **CHARGE:** \_\_\_\_\_

8 **DATE OF ARREST:** \_\_\_\_\_

9 **ARRESTING AGENCY:** \_\_\_\_\_

10 **CITY/PARISH OF ARREST:** \_\_\_\_\_

11 **FURTHER, that the above offense(s) for which this Certification issued was**  
12 **committed, in substantial part, as a result of the above-named being a victim of human**  
13 **trafficking, in accordance with R.S. 14:46.2.**

14 **FURTHER, this Certification shall be considered as prima facie evidence of the**  
15 **victim's status in similar eligible crimes committed within other Louisiana jurisdictions**  
16 **during the time period in which the above-named was a victim of human trafficking.**

17 **FURTHER, all applicable time delays pertaining to expungement contained in**  
18 **Louisiana Code of Criminal Procedure Articles 977 and 978 shall be waived when**  
19 **presented to the clerk of court with an application for expungement of the**  
20 **above-specified offense(s).**

21 **FURTHER, any application for expungement of the above-specified offense(s)**  
22 **shall be at no cost to the above-named victim.**

23  
24

25 \_\_\_\_\_

26 **DATE**

\_\_\_\_\_

**DISTRICT ATTORNEY**

27 \_\_\_\_\_

**PARISH OF**

28 \_\_\_\_\_

**JUDICIAL DISTRICT**

29 **STATE OF LOUISIANA**

1 Section 2. R.S. 14:46.2(A)(1), (C)(1) and (3)(b) and (f), and (D) are hereby amended  
2 and reenacted and R.S. 14:46.2(C)(3)(k) and (l) are hereby enacted to read as follows:

3 §46.2. Human trafficking

4 A. It shall be unlawful:

5 (1)(a) For any person to knowingly recruit, harbor, transport, provide, solicit,  
6 receive, isolate, entice, obtain, patronize, procure, purchase, hold, restrain,  
7 induce, threaten, subject, or maintain the use of another person through fraud,  
8 force, or coercion to provide services or labor.

9 (b) For any person to knowingly recruit, harbor, transport, provide, solicit,  
10 sell, purchase, patronize, procure, hold, restrain, induce, threaten, subject,  
11 receive, isolate, entice, obtain, or maintain the use of a person under the age of  
12 twenty-one years for the purpose of engaging in commercial sexual activity  
13 regardless of whether the person was recruited, harbored, transported, provided,  
14 solicited, sold, purchased, received, isolated, enticed, obtained, or maintained  
15 through fraud, force, or coercion. It shall not be a defense to prosecution for a  
16 violation of the provisions of this Subparagraph that the person did not know the age  
17 of the victim or that the victim consented to the prohibited activity.

18 \* \* \*

19 C. For purposes of this Section:

20 (1) "Commercial sexual activity" means any sexual act performed or  
21 conducted when anything of value has been given, promised, or received by any  
22 person, directly or indirectly, including the production of pornography.

23 \* \* \*

24 (3) "Fraud, force, or coercion" shall include but not be limited to any of the  
25 following:

26 \* \* \*

27 (b) Physically restraining, isolating, confining, or threatening to physically  
28 restrain, isolate, or confine another person.

29 \* \* \*

1 (f) The actual or threatened destruction, concealment, removal, **withholding**,  
 2 confiscation, or possession of any actual or purported passport or other immigration  
 3 document, or any other actual or purported government identification document, of  
 4 another person.

\* \* \*

6 **(k) Exposing or threatening to expose any fact or information that would**  
 7 **subject an individual to criminal or immigration proceedings.**

8 **(l) Causing or threatening to cause financial harm to an individual or**  
 9 **using financial control over an individual.**

\* \* \*

11 D. It shall not be a defense to prosecution for a violation of this Section that  
 12 the person being recruited, harbored, transported, provided, solicited, received,  
 13 isolated, **patronized, procured, purchased,** enticed, obtained, or maintained is  
 14 actually a law enforcement officer or peace officer acting within the official scope  
 15 of his duties.

\* \* \*

17 Section 3. This Act shall become effective upon signature by the governor or, if not  
 18 signed by the governor, upon expiration of the time for bills to become law without signature  
 19 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 20 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 21 effective on the day following such approval.

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The original instrument was prepared by Whitney Kauffeld. The following digest, which does not constitute a part of the legislative instrument, was prepared by Ann S. Brown.

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DIGEST

SB 148 Reengrossed                      2022 Regular Session                      Mizell

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

Proposed law retains present law.

Proposed law adds other offenses to the definition of human trafficking and commercial sexual activity.

Present law provides for the expungement of a record, fees, collection, exemptions, and disbursement for offenses.

Proposed law retains present law.

Proposed law provides a process for human trafficking victims to request expungement of a record of offense, from the prosecuting authority, by applying for a "certification of human trafficking victim status".

Proposed law provides that the "certification of human trafficking victim status" indicates that the offense for which the expungement is sought was committed, in substantial part, as the result of the applicant being a victim of human trafficking.

Proposed law provides the applicant has the burden of establishing by a preponderance of the evidence that the offense was committed as a result of being a victim of human trafficking.

Proposed law provides that the certification shall be prima facie evidence that similar eligible crimes committed within other Louisiana jurisdictions during the time period the applicant was a victim of human trafficking were committed, in substantial part, as the result of the applicant being a victim of human trafficking.

Proposed law provides that all applicable time delays pertaining to expungement provided by present law shall be waived when the certification is presented to the clerk of court with the application for expungement.

Proposed law provides that an applicant for the expungement of a record of offense who was a victim of human trafficking shall not be required to pay any fees to the clerk of court, the Louisiana Bureau of Criminal Identification and Information, the sheriff, the district attorney, or any other agency.

Proposed law provides that utilization of this process shall not preclude any applicant from seeking additional expungement to which they are entitled.

Proposed law requires the Louisiana District Attorneys Association to submit annually, prior to February 1st, a report to the Legislature that includes the number of applications for, denials of, and approvals of the certification of human trafficking.

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

Proposed law provides a form for the "certification of human trafficking victim status" that must be filled out by the district attorney.

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

(Amends C.Cr.P. Art. 983(H) and (I), and R.S. 14:46.2(A)(1), (C)(1) and (3)(b) and (f), and (D); adds C.Cr.P. Art. 983(J) and 997 and R.S. 14:46.2(C)(3)(k) and (l))

#### Summary of Amendments Adopted by Senate

##### Senate Floor Amendments to engrossed bill

1. Remove the motion to set aside a conviction if the court finds by a preponderance of evidence that the crime was committed as a result of the defendant being a victim of human trafficking.
2. Remove the form for a motion to set aside a conviction of certain offenses

related to human trafficking.

3. Add a process for human trafficking victims to request expungement of a record of offense, from the prosecuting authority, by applying for a "certification of human trafficking victim status".
4. Add detailed steps of the process, requires no fees for the process, and creates a form that must be filled out by the district attorney.
5. Requires the Louisiana District Attorneys Association to annually report to the legislature the number of application for, denials of, and approval of the certification of human trafficking victim status no later than the first of February.