

2022 Regular Session

HOUSE BILL NO. 313

BY REPRESENTATIVE PRESSLY

CRIMINAL/VICTIMS: Provides relative to rights of victims of criminal offenses

1 AN ACT

2 To amend and reenact R.S. 46:1843, 1844(H), (K)(1)(a), (T), and (W)(1)(a), and 1845(B),
3 to enact R.S. 46:1844(X), and to repeal R.S. 46:1845(C) and (D), relative to the
4 rights of victims of criminal offenses; to provide relative to the reporting of a crime;
5 to provide relative to the requirement to register with certain offices and agencies;
6 to provide for access to certain reports; to provide relative to the duties of the district
7 attorney, law enforcement, and judicial agencies with respect to victims of sexual
8 assault; to provide for the rights of sexual assault victims; to provide relative to the
9 admissibility of certain evidence; to provide relative to penalties and causes of action
10 under certain circumstances; to provide for a contingent effective date; and to
11 provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 46:1843, 1844(H), (K)(1)(a), (T), and (W)(1)(a), and 1845(B) are
14 hereby amended and reenacted and R.S. 46:1844(X) is hereby enacted to read as follows:

15 §1843. Eligibility of victims

16 ~~Except as provided in R.S. 46:1845, a~~ A victim has the rights and is eligible
17 for the services under this Chapter ~~only if the victim reported the crime to law~~
18 ~~enforcement authorities within seventy-two hours of its occurrence or discovery,~~
19 ~~unless extenuating circumstances exist for later reporting~~ regardless of when the
20 victim reported the crime to law enforcement authorities.

1 §1844. Basic rights for victim and witness

2 * * *

3 H. Presentence or postsentence reports. ~~If properly registered with the clerk~~
4 ~~of court, the~~ The victim or designated family member shall have the right to review
5 and comment on the presentence or postsentence reports relating to the crime against
6 the victim. The trial court shall regulate when and how the presentence report is
7 provided to the victim or designated family member. The Department of Public
8 Safety and Corrections shall regulate how the postsentence report is provided to the
9 victim or designated family member.

10 * * *

11 K. Right of victim or designated family member to be present and heard at
12 all critical stages of the proceedings.

13 (1)(a) At all critical stages of the prosecution, if the victim or designated
14 family member ~~has registered with the appropriate law enforcement or judicial~~
15 ~~agency and~~ is present, the court shall determine if the victim or designated family
16 member wishes to make a victim impact statement. If the victim is not present, the
17 court shall ascertain whether the victim or designated family member has requested
18 notification and, if so, whether proper notice has been issued to the victim or
19 designated family member, in accordance with Subsection B of this Section, by the
20 clerk of court or by the district attorney's office. If notice has been requested and
21 proper notice has not been issued, the court shall continue the proceedings until
22 proper notice is issued.

23 * * *

24 T. Registration with the appropriate law enforcement or judicial agency.

25 (1) In order for a victim or designated family member to be eligible to
26 receive notices hereunder ~~and exercise the rights provided in this Chapter~~, the victim
27 or designated family member ~~must~~ may complete a form promulgated by the
28 Louisiana Commission on Law Enforcement and Administration of Criminal Justice.
29 The form shall be completed by the victim or designated family member and shall

1 be filed with the law enforcement agency investigating the offense of which the
 2 person is a victim, as defined in this Chapter. The completed victim notice and
 3 registration form shall be included in the documents sent by the law enforcement
 4 agency to the district attorney for prosecution. The district attorney shall include the
 5 completed victim notice and registration form with any subsequent bill of
 6 information or indictment that is filed with the clerk of court. Upon conviction, the
 7 victim notice and registration form shall be included in the documents sent by the
 8 clerk of court to the Department of Public Safety and Corrections, the law
 9 enforcement agency having custody of the defendant, or the division of probation
 10 and parole.

11 (2) All victim notice and registration forms, and the information contained
 12 therein, shall be kept confidential by all law enforcement and judicial agencies
 13 having possession. The information shall be used only for the purposes required by
 14 this Chapter, and shall be released only upon court order after contradictory hearing.

15 (3) The victim and designated family member shall have the right to register
 16 with the appropriate agency at any time and exercise prospectively the rights
 17 guaranteed by this Chapter. However, a victim or designated family member who
 18 does not register with the appropriate agency shall nevertheless be permitted to
 19 exercise the rights guaranteed by this Chapter.

20 * * *

21 W. Confidentiality of crime victims who are minors, victims of sex offenses,
 22 and victims of human trafficking-related offenses.

23 (1)(a) In order to protect the identity and provide for the safety and welfare
 24 of crime victims who are minors under the age of eighteen years and of victims of
 25 sex offenses or human trafficking-related offenses, notwithstanding any provision
 26 of law to the contrary, all public officials and officers and public agencies, including
 27 but not limited to all law enforcement agencies, sheriffs, district attorneys, judicial
 28 officers, clerks of court, the Crime Victims Reparations Board, and the Department
 29 of Children and Family Services or any division thereof, shall not publicly disclose

1 the name, address, contact information, or identity of crime victims who at the time
 2 of the commission of the offense are minors under eighteen years of age or of
 3 victims of sex offenses or human trafficking-related offenses, regardless of the date
 4 of commission of the offense. The confidentiality of the identity of the victim who
 5 at the time of the commission of the offense is a minor under eighteen years of age
 6 or the victim of a sex offense or human trafficking-related offense may be waived
 7 by the victim. The public disclosure of the name of the juvenile crime victim by any
 8 public official or officer or public agency is not prohibited by this Subsection when
 9 the crime resulted in the death of the victim. Nothing in this Subsection shall be
 10 construed to require the redaction of a victim's name when the named victim is the
 11 one requesting such documents, reports, or any other records.

12 * * *

13 X. All victims of violent crime shall have the right to access and obtain a
 14 copy of their initial police report at no cost to them.

15 §1845. Additional rights for victims of sexual assaults; notification of rights

16 * * *

17 B. A victim of sexual assault shall have the right to a forensic medical exam
 18 as provided in R.S. 40:1216.7. A victim of sexual assault ~~has the right to~~ shall be
 19 notified of and the ability to request the presence of a sexual assault advocate during
 20 the administration of a forensic medical examination or a scheduled interview by a
 21 law enforcement official if a sexual assault advocate is reasonably available.
 22 Nothing in this Section shall be construed to prohibit the conducting of a forensic
 23 medical examination or an interview by a law enforcement official in the absence of
 24 a sexual assault advocate. All victims of sexual assault shall have the right to access
 25 and obtain a copy of their forensic medical examination report at no cost to them
 26 pursuant to R.S. 40:1216.1(G).

27 * * *

28 Section 2. R.S. 46:1845(C) and (D) are hereby repealed in their entirety.

1 Section 3. This Act shall take effect and become operative if and when the Act
 2 which originated as Senate Bill No. 147 of this 2022 Regular Session of the Legislature is
 3 enacted and becomes effective.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 313 Engrossed

2022 Regular Session

Pressly

Abstract: Provides for the rights and eligibility for services of victims of criminal offenses.

Present law provides that a victim has the rights and is eligible for the services provided to crime victims under present law only if the victim reported the crime to law enforcement authorities within 72 hours of its occurrence or discovery, unless extenuating circumstances exist.

Proposed law provides that a victim has the rights and is eligible for victim services regardless of when the victim reported the crime to law enforcement authorities.

Present law provides that if the victim is properly registered with the clerk of court, the victim or designated family member shall have the right to review and comment on the presentence or postsentence reports relating to the crime against the victim.

Proposed law removes the requirement that the victim be properly registered with the clerk of court.

Present law provides that at all critical stages of the prosecution, if the victim or designated family member has registered with the appropriate law enforcement or judicial agency and is present, the court shall determine if the victim or designated family member wishes to make a victim impact statement.

Proposed law removes the requirement that the victim or designated family member register with the appropriate law enforcement or judicial agency.

Present law provides that in order for a victim or designated family member to be eligible to receive notices provided by present law and exercise the rights provided by present law, the victim or designated family member must complete a form promulgated by the La. Commission on Law Enforcement and Administration of Criminal Justice.

Proposed law retains present law but authorizes instead of requires the victim or designated family member to complete the form promulgated by the La. Commission on Law Enforcement and Administration of Criminal Justice.

Present law provides that the victim and designated family member shall have the right to register with the appropriate agency at any time and exercise prospectively the rights guaranteed by present law.

Proposed law retains present law but also provides that a victim or designated family member who does not register with the appropriate agency shall nevertheless be permitted to exercise the rights guaranteed by present law.

Present law provides that in order to protect the identity and provide for the safety and welfare of crime victims who are minors and of victims of sex offenses or human trafficking-related offenses, all public officials and officers and public agencies shall not publicly disclose the name, address, contact information, or identity of crime victims who at the time of the commission of the offense are minors or victims of sex offenses or human trafficking-related offenses, regardless of the date of commission of the offense, but allows the victim to waive such confidentiality.

Present law further provides that the public disclosure of the name of the juvenile crime victim is not prohibited when the crime resulted in the death of the victim.

Proposed law retains present law and also provides that present law shall be construed to require the redaction of a victim's name when the named victim is the one requesting such documents, reports, or any other records.

Proposed law provides that all victims of violent crimes shall have the right to access and obtain their initial police report and that a victim of sexual assault shall have the right to a forensic medical exam and a copy of their medical examination report pursuant to proposed law (R.S. 40:1216.1(G)) as proposed by Senate Bill 147 of the 2022 Regular Session.

Present law provides that the district attorney, prior to trial, shall make reasonable efforts to interview the victim or designated family member to determine the facts of the case and whether the victim or the family is requesting restitution, and further provides that law enforcement and judicial agencies shall provide a private setting to conduct all interviews of the sexual assault victim.

Proposed law repeals present law.

Present law provides that the victim or the parent or guardian of a minor victim of sexual assault and the victim's family may refuse any requests for interviews with the attorney for the defendant or any employee or agent working for the attorney for the defendant, and further provides that before any victim of sexual assault may be subpoenaed to testify on behalf of a defendant at any pretrial hearing, the defendant shall show good cause at a contradictory hearing with the district attorney why the subpoena should be issued.

Proposed law repeals present law.

Present law provides that willful disregard of the rights of victims and witnesses as provided by present law may be punishable as contempt of court, and provides that failure to comply with the provisions of present law shall not affect the admissibility of any evidence in a civil or criminal proceeding, nor shall any sentence, plea, conviction, or other final disposition be invalidated due to the failure to comply with present law.

Proposed law repeals present law.

Present law provides that present law shall not be construed as creating a cause of action by or on behalf of any person for an award of costs or attorney fees, for the appointment of counsel for a victim, or for any cause of action for compensation or damages against the state, a political subdivision, a public agency, or a court, or any officer, employee, or agent thereof, and further provides that nothing in present law precludes filing for a writ of mandamus as provided in the C.C.P. to compel the performance of a ministerial duty required by law.

Proposed law repeals present law.

Proposed law provides that proposed law shall take effect and become operative if and when the Act which originated as Senate Bill No. 147 of the 2022 Regular Session is enacted and becomes effective.

(Amends R.S. 46:1843, 1844(H), (K)(1)(a), (T), and (W)(1)(a), and 1845(B); Adds R.S. 46:1844(X); Repeals R.S. 46:1845(C) and (D))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Judiciary to the original bill:

1. Specify that victims of violent crimes have the right to obtain their initial police report.
2. Remove the requirement that the forensic medical exam be free.
3. Add a cross reference to proposed law R.S. 40:1216.1(G) as provided by Senate Bill No. 147 of the 2022 Regular Session.
4. Make proposed law contingent on the enactment of Senate Bill No. 147 of the 2022 Regular Session.