

2023 Regular Session

SENATE BILL NO. 215

BY SENATOR BARROW

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

CRIME/PUNISHMENT. Provides justification defense to domestic violence victim-defendants. (8/1/23)

AN ACT

To amend and reenact R.S. 14:46.2(F)(1) and Code of Criminal Procedure Art. 851(B)(6), 853(C), and 855.1, and to enact R.S. 14:18.1, Code of Criminal Procedure Art. 890.1(F) and Code of Evidence Art. 707, relative to criminal culpability; to provide a justification defense for victims of intimate partner violence, domestic abuse, human trafficking, or sexual assault; to provide for reports to the legislature; to provide relative to sentencing; to provide relative to motions for new trial; to provide relative to expert testimony; to provide relative to sentencing; to provide relative to postconviction relief; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:46.2(F)(1) is hereby amended and reenacted and R.S. 14:18.1 is hereby enacted to read as follows:

§18.1. Justification; victims of intimate partner violence, domestic abuse, human trafficking, or sexual assault; reporting

A.(1) Victims of intimate partner violence, domestic abuse, human trafficking, or sexual assault may assert a justification defense to their prosecution for any conduct that they engage in as a direct result of being a

1 victim of intimate partner violence, domestic abuse, human trafficking, or
2 sexual assault.

3 (2) A person's conduct is a direct result of, or incident to, being a victim
4 of intimate partner violence, domestic abuse, human trafficking, or sexual
5 assault, when either of the following conditions are met:

6 (a) There is a rational and causal connection between the person's
7 conduct and the person's victimization.

8 (b) The defendant's conduct was compelled through fraud, force, or
9 coercion as defined in R.S. 14:46.2(C)(3).

10 (3) The justification defense provided by this Section shall constitute a
11 justification defense separate and distinct from any other justification defense
12 provided by law. This justification defense shall not be limited by other
13 available justification defenses, nor shall this Section be interpreted to limit
14 other available defenses.

15 B. A defendant who is a victim of intimate partner violence, domestic
16 abuse, human trafficking, or sexual assault shall have no duty to escape or
17 attempt to escape a relationship or shared residence with the perpetrator of the
18 intimate partner violence, domestic abuse, human trafficking, or sexual assault
19 prior to or during the conduct at issue in order for the defense provided by this
20 Section to apply.

21 C. Evidence of the following shall not be admissible for the purposes of
22 rebutting the justification defense provided by this Section:

23 (1) A defendant's failure to escape or attempt to escape from the
24 relationship or shared residence with the perpetrator of intimate partner
25 violence, domestic abuse, human trafficking, or sexual assault.

26 (2) A defendant's prior failure to pursue or cooperate in the arrest or
27 prosecution of a perpetrator of intimate partner violence, domestic abuse,
28 human trafficking, or sexual assault.

29 (3) The defendant's past sexual behavior that was not the result of or

1 related to intimate partner violence, domestic abuse, human trafficking, or
2 sexual assault, or any history of commercial sexual activity that was not the
3 result of intimate partner violence, domestic abuse, human trafficking, or sexual
4 assault.

5 D. A defendant may raise the justification defense provided by this
6 Section in a motion to quash prior to trial, and as a defense at trial.

7 E. A person who was unable to claim the justification defense provided
8 by this Section because this Section had not yet been enacted at the time of the
9 commission of the offense or the conviction shall be eligible for relief under any
10 of the following provisions:

11 (1) The defendant may file a motion for a new trial pursuant to Code of
12 Criminal Procedure Article 851(B)(6)(b) within the time limits provided by
13 Code of Criminal Procedure Article 853(C).

14 (2) The defendant may file a motion to vacate the judgment. The trial
15 court shall grant the motion if the defendant proves by clear and convincing
16 evidence that the defendant's conduct was justified under this Section. The
17 granting of the motion to vacate shall have the same effect as the granting of a
18 judgment of acquittal provided by Code of Criminal Procedure Article 821. A
19 defendant may file the motion to vacate within the time limits provided by Code
20 of Criminal Procedure Article 853(C).

21 (3) If the defendant is convicted after a new trial pursuant to this Section,
22 the trial court shall not impose a sentence greater than that originally received
23 by the defendant.

24 F. Any person found by the court to be a victim pursuant to the
25 provisions of this Section shall be notified of any treatment or specialized
26 services for victims of intimate partner violence, domestic abuse, human
27 trafficking, or sexual assault, to the extent that such services are available.

28 G. For the purposes of this Section:

29 (1) "Domestic abuse" shall be defined by R.S. 46:2132, regardless of

1 whether the conduct led to an arrest or conviction.

2 (2) "Sexual assault" shall be defined by R.S. 46:2184, regardless of
3 whether the conduct led to an arrest or conviction.

4 (3) "Human trafficking" shall be defined as the conduct prohibited by
5 R.S. 14:46.2, regardless of whether the conduct led to an arrest or conviction.

6 H.(1) The chief judge in each judicial district shall submit a report to the
7 Judicial Council of Louisiana by December 1, 2023, and annually thereafter
8 until December 1, 2025, which includes the following information:

9 (a) The number and type of motions presenting the defense provided by
10 this Section.

11 (b) The number of motions granted pursuant to this Section.

12 (c) The outcomes of trial verdicts when the defense provided by this
13 Section was presented.

14 (2) The Judicial Counsel of Louisiana shall compile the information
15 provided in (H)(1) and report to the Senate Committee on Judiciary C annually
16 by January 15, 2024, until January 15, 2026.

17 * * *

18 §46.2. Human trafficking

19 * * *

20 F.(1) A victim of trafficking involving services that include commercial
21 sexual activity or any sexual contact which constitutes a crime pursuant to the laws
22 of this state shall have an affirmative defense to prosecution for any of the following
23 offenses which were committed as a direct result of being trafficked:

24 ~~(a) R.S. 14:82 (Prostitution).~~

25 ~~(b) R.S. 14:83.3 (Prostitution by massage).~~

26 ~~(c) R.S. 14:83.4 (Massage; sexual conduct prohibited).~~

27 ~~(d) R.S. 14:89 (Crime against nature).~~

28 ~~(e) R.S. 14:89.2 (Crime against nature by solicitation).~~

29 * * *

1 Section 2. Code of Evidence Art. 707 is hereby enacted to read as follows:

2 Art. 707. Expert testimony regarding victim of intimate partner violence,
3 domestic abuse, human trafficking, or sexual assault

4 A. A witness who is qualified as an expert pursuant to Code of Evidence
5 Article 702 may testify in the form of an opinion on whether a defendant is a
6 victim of intimate partner violence, domestic abuse, human trafficking, or
7 sexual assault.

8 B. Evidence of the following shall be admissible in determining whether
9 a defendant's conduct is justifiable pursuant to R.S. 14:18.1 or in determining
10 an appropriate sentence:

11 (1) Expert opinion as to the effects of intimate partner violence, domestic
12 abuse, human trafficking, or sexual assault on the defendant's state of mind.

13 (2) Expert opinion as to the dynamics of intimate partner violence,
14 domestic abuse, human trafficking, or sexual assault.

15 (3) Expert opinion as to the circumstances of entrapment and coercive
16 control resulting from intimate partner violence, domestic abuse, human
17 trafficking, or sexual assault.

18 Section 3. Code of Criminal Procedure Art. 851(B)(6), 853(C), and 855.1 are hereby
19 amended and reenacted and Code of Criminal Procedure Art. 890.1(F) is hereby enacted to
20 read as follows:

21 Art. 851. Grounds for new trial

22 * * *

23 B. The court, on motion of the defendant, shall grant a new trial whenever
24 any of the following occur:

25 * * *

26 (6) The defendant is either:

27 (a) A a victim of human trafficking or trafficking of children for sexual
28 purposes and the acts for which the defendant was convicted were committed by the
29 defendant as a direct result of being a victim of the trafficking activity.

1 **(b) A victim of intimate partner violence, domestic abuse, human**
 2 **trafficking, or sexual assault, and the acts for which the defendant was**
 3 **convicted were committed as a direct result of the defendant's victimization,**
 4 **determined pursuant to R.S. 14:18.1. If R.S. 14:18.1 had not yet taken effect at**
 5 **the time of the commission of the offense, a defendant shall receive a new trial**
 6 **upon establishing that the defendant would have had a reasonable probability**
 7 **of a successful justification defense had R.S. 14:18.1 been in effect. The motion**
 8 **may be supported by evidence presented at trial or evidence not originally**
 9 **presented at trial.**

10 * * *

11 Art. 853. Time for filing motion for new trial

12 * * *

13 C. When the motion for a new trial is based on Article 851(B)(6) of this
 14 Code, the motion may be filed within three years after the verdict or judgment of the
 15 trial court, although a sentence has been imposed or a motion for new trial has been
 16 previously filed. However, if an appeal is pending, the court may hear the motion
 17 only on remand of the case. **Additionally, notwithstanding any provision of law**
 18 **to the contrary, a defendant may assert a claim based on Code of Criminal**
 19 **Procedure Article 851(B)(6) prior to December 1, 2026, even if more than three**
 20 **years have passed since the verdict or judgment of the trial court, and**
 21 **regardless of whether the conviction is final or the defendant has previously**
 22 **filed for postconviction relief.**

23 * * *

24 Art. 855.1. Conviction based on acts committed as a victim of **human** trafficking,
 25 **trafficking of children for sexual purposes, intimate partner**
 26 **violence, sexual assault, or domestic abuse**

27 A motion for new trial based on **Code of Criminal Procedure** Article
 28 851(B)(6) of this Code shall be available only to persons convicted of violating R.S.
 29 ~~14:82, 83.3, 83.4, 89, or 89.2~~ prior to August 1, 2014, and shall contain allegations

1 of fact sworn to by the defendant or counsel of the defendant, showing that the
 2 defendant was convicted of the offense which was committed as a direct result of
 3 being a victim of human trafficking, ~~or trafficking of children for sexual purposes,~~
 4 **intimate partner violence, sexual assault, or domestic abuse regardless of when**
 5 **the defendant was convicted.** ~~or a victim of an offense which would constitute~~
 6 ~~human trafficking or trafficking of children for sexual purposes regardless of the date~~
 7 ~~of conviction.~~ The motion shall provide information showing a rational and causal
 8 connection between the acts for which the defendant was convicted and the acts upon
 9 which the defendant bases his status as a victim, **or supporting the justification**
 10 **defense provided by R.S. 14:18.1.**

11 * * *

12 Art. 890.1. Waiver of minimum mandatory sentences; procedure; exceptions

13 * * *

14 **F. If the defendant establishes by a preponderance of the evidence that**
 15 **the defendant's status as a victim of intimate partner violence, domestic abuse,**
 16 **human trafficking, or sexual assault was a significant contributing factor to the**
 17 **defendant's participation in the offense, the sentencing range shall be the**
 18 **sentencing range for the attempt to commit the offense of conviction, as**
 19 **provided in R.S. 14:27(D). However, if the defendant was convicted of the**
 20 **attempt to commit an offense provided in R.S. 14:27(D), the maximum sentence**
 21 **shall be one-half of the maximum sentence for a conviction of an attempt to**
 22 **commit the offense. In no event shall the sentence be more than twenty years in**
 23 **the custody of the Department of Corrections. This provision shall be applicable**
 24 **to defendants who were sentenced prior to the enactment of R.S. 14:18.1, and**
 25 **may be raised by motion pursuant to Code of Criminal Procedure Article 881.5.**
 26 **For defendants subject to resentencing provided by this Paragraph, this**
 27 **Paragraph does not authorize the court to impose a sentence greater than that**
 28 **originally imposed.**

29 Section 4. The provisions of this Act shall cease to be effective on December 31,

1 2027.

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

DIGEST

SB 215 Original 2023 Regular Session Barrow

Proposed law permits a defendant who is a victim of intimate partner violence, domestic abuse, human trafficking, or sexual assault to assert the defense of justification when the crime is a direct result of the defendant's status as a victim.

Proposed law requires a rational and causal connection between the defendant's conduct and victimization, and a showing that the conduct was compelled through fraud, force, or coercion. Proposed law further provides that the victim has no duty to escape in order to assert the defense and the failure to escape, prior failure to cooperate in the arrest or prosecution of the perpetrator, and the defendant's past sexual behavior are not admissible to rebut the justification.

Proposed law permits retroactive application to defendants who could have asserted a justification defense based upon proposed law.

Proposed law prohibits the court from sentencing a defendant for longer than the original sentence if the re-sentencing is a result of the new trial under proposed law.

Proposed law requires that defendants be notified of any specialized treatment based upon their status, to the extent services are available.

Proposed law requires the chief judge in each judicial district to submit a report which includes the following information to the Judicial Council of Louisiana by December 1, 2023, and annually thereafter until 2025:

- (1) The number and type of motions presenting this defense.
- (2) The number of motions granted.
- (3) The outcomes of trial verdicts when this defense was presented.

Proposed law further requires the Judicial Counsel of Louisiana is to compile the information by the district courts and report to the Senate Committee on Judiciary C annually by January 15, 2024, until 2026.

Proposed law provides that a victim of human trafficking may assert an affirmative defense to prosecution for offenses that were committed as a direct result of being trafficked.

Proposed law permits expert testimony, in the form of expert opinion, regarding whether a defendant is a victim of intimate partner violence, domestic abuse, human trafficking, or sexual assault.

Proposed law permits a defendant to file a motion for a new trial if the crime of conviction is the result of their status as a victim of intimate partner violence, domestic abuse, human trafficking, or sexual assault.

Proposed law grants a three-year period after conviction for the defendant to file the motion for a new trial, and grants an additional three years to defendants convicted prior to the effective date of proposed law.

Proposed law expands the meaning of "victim" in the context of who may be granted a new trial to include victims of intimate partner violence, domestic abuse, human trafficking, and sexual assault, or those able to show a justification defense under proposed law.

Proposed law permits a sentencing court to reduce the maximum sentence for a defendant who is also a victim of intimate partner violence, domestic abuse, human trafficking, or sexual assault.

Proposed law provides that the provisions of this Act will cease to be effective on December 31, 2027.

Effective August 1, 2023.

(Amends R.S. 14:46.2(F)(1) and C.Cr.P. Art. 851(B)(6), 853(C), and 855.1; adds R.S. 14:18.1, C.Cr.P. Art. 890.1(F), and C.E. Art. 707)