

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 to enact R.S. 14:18.1 and 46.2(F)(4), Code of Criminal Procedure Art. 890.1(F), 926.4, 930.3(9), and 930.8(A)(7), 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 and 14:46.2(F)(4) are hereby enacted to read as follows:

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

**A. Victims of intimate partner violence, domestic abuse, human trafficking, or sexual assault may assert this justification defense to their prosecution under either of the following circumstances:**

1           **(1) The alleged victim of the offense perpetrated intimate partner**  
2           **violence, domestic abuse, human trafficking, or sexual assault against the**  
3           **defendant, and the defendant's conduct is the direct result of that intimate**  
4           **partner violence, domestic abuse, or sexual assault. The conduct is a direct**  
5           **result of intimate partner violence, domestic abuse, human trafficking, or sexual**  
6           **assault if either of the following conditions is met:**

7           **(a) There is a rational, causal connection between the defendant's**  
8           **victimization and the instant conduct and the defendant's conduct is not the**  
9           **result, in significant part, of other events, circumstances, or considerations**  
10           **apart from the intimate partner violence, domestic abuse, human trafficking,**  
11           **or sexual assault.**

12           **(b) The defendant's conduct was compelled through fraud, force, or**  
13           **coercion by the person who perpetrated intimate partner violence, domestic**  
14           **abuse, human trafficking, or sexual assault against her. Fraud, force, or**  
15           **coercion shall be defined in the same way as in R.S. 14:46.2(C)(3).**

16           **(2) The justification defense provided by this Section shall constitute a**  
17           **justification defense separate and distinct from any other justification defense**  
18           **provided by law. This justification defense shall not be limited by other**  
19           **available justification defenses, nor shall this Section be interpreted to limit**  
20           **other available defenses.**

21           **B. A defendant who is a victim of intimate partner violence, domestic**  
22           **abuse, human trafficking, or sexual assault shall have no duty to escape or**  
23           **attempt to escape a relationship or shared residence with the perpetrator of the**  
24           **intimate partner violence, domestic abuse, human trafficking, or sexual assault**  
25           **prior to or during the conduct at issue in order for the defense provided by this**  
26           **Section to apply.**

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

29           **(1) A defendant's failure to escape or attempt to escape from the**

1 relationship or shared residence with the perpetrator of intimate partner  
2 violence, domestic abuse, human trafficking, or sexual assault.

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

6 (3) The defendant's past sexual behavior that was not the result of or  
7 related to intimate partner violence, domestic abuse, human trafficking, or  
8 sexual assault, or any history of commercial sexual activity that was not the  
9 result of intimate partner violence, domestic abuse, human trafficking, or sexual  
10 assault.

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

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

17 F. For the purposes of this Section:

18 (1) "Domestic abuse" shall be defined by R.S. 46:2132, regardless of  
19 whether the conduct led to an arrest or conviction.

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

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

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

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

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

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

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

6 \* \* \*

7 §46.2. Human trafficking

8 \* \* \*

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

- 13 (a) ~~R.S. 14:82 (Prostitution).~~
- 14 (b) ~~R.S. 14:83.3 (Prostitution by massage).~~
- 15 (c) ~~R.S. 14:83.4 (Massage, sexual conduct prohibited).~~
- 16 (d) ~~R.S. 14:89 (Crime against nature).~~
- 17 (e) ~~R.S. 14:89.2 (Crime against nature by solicitation).~~

18 \* \* \*

19 (4) Victims of trafficking shall also have the ability to assert the  
20 justification defense pursuant to R.S. 14:18.1.

21 \* \* \*

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

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

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

29 B. Evidence of the following shall be admissible in determining whether

1 a defendant's conduct is justifiable pursuant to R.S. 14:18.1 or in determining  
2 an appropriate sentence:

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

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

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

10 Section 3. Code of Criminal Procedure Art. 890.1(F), 926.4, 930.3(9), and  
11 930.8(A)(7) are hereby enacted to read as follows:

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 \* \* \*

1           **Art. 926.4. Post-conviction relief for survivors of domestic abuse, intimate**  
2                                   **partner violence, sexual violence and human trafficking**

3           **A. A petitioner who is a victim of intimate partner violence, domestic**  
4           **abuse, human trafficking, or sexual assault may seek post-conviction relief**  
5           **under this Article.**

6           **B. The petitioner shall be entitled to post-conviction relief if all of the**  
7           **following are proven:**

8                           **(1) He is a victim of intimate partner violence, domestic abuse, human**  
9                           **trafficking, or sexual assault.**

10                          **(2) The intimate partner violence, domestic abuse, human trafficking, or**  
11                          **sexual assault was relevant to the petitioner's guilt or innocence or to the**  
12                          **proportionality of the sentence.**

13                          **(3) The petitioner's conviction is unreliable or the petitioner's sentence**  
14                          **is disproportionate because any of the following:**

15                           **(a) The petitioner's attorney failed to reasonably investigate or introduce**  
16                           **the petitioner's history of intimate partner violence, domestic abuse, human**  
17                           **trafficking, or sexual assault.**

18                           **(b) The petitioner's attorney failed to learn the method by which expert**  
19                           **testimony about intimate partner violence, human trafficking, or sexual assault**  
20                           **should be introduced at trial, consult with such an expert, or seek to introduce**  
21                           **such expert testimony at trial.**

22                           **(c) The evidence or argument introduced at trial or sentencing contained**  
23                           **unreliable and discredited misconceptions about the dynamics of intimate**  
24                           **partner violence, domestic abuse, human trafficking, or sexual assault which**  
25                           **were material to the issues at trial or sentencing.**

26                           **(4) There is a reasonable probability that, but for the deficiencies or**  
27                           **errors described in Subparagraph (B)(3) of this Article, the result of the**  
28                           **proceedings would have been different.**

29           **C. Notwithstanding any provisions of the law to the contrary, a petitioner**

1 who otherwise would be barred from review on the merits by the time limitation  
 2 provided in Article 930.8 or the procedural objections provided in Article 930.4  
 3 shall not be barred from making this claim. This exception shall only apply to  
 4 the petitioner’s first claim under this Article.

5 D. For the purposes of this Section:

6 (1) “Domestic abuse” shall be defined by R.S. 46:2132, regardless of  
 7 whether the conduct led to an arrest or conviction.

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

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

12 \* \* \*

13 Art. 930.3. Grounds

14 If the petitioner is in custody after sentence for conviction for an offense,  
 15 relief shall be granted only on the following grounds:

16 \* \* \*

17 (9) The petitioner qualifies for relief pursuant to Code of Criminal  
 18 Procedure Article 926.4.

19 \* \* \*

20 Art. 930.8. Time limitations; exceptions; prejudicial delay

21 A. No application for post conviction relief, including applications which  
 22 seek an out-of-time appeal, shall be considered if it is filed more than two years after  
 23 the judgment of conviction and sentence has become final under the provisions of  
 24 Article 914 or 922, unless any of the following apply:

25 \* \* \*

26 (7) The petitioner qualifies for the exception to timeliness in Article  
 27 926.4.

28 \* \* \*

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

1 December 31, 2027.

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

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DIGEST

SB 215 Engrossed

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 offense is a direct result of the intimate partner violence, domestic violence, human trafficking, or sexual assault.

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 prohibits the court from sentencing a defendant for longer than the original sentence if the re-sentencing is a result of a 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 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 proposed law will cease to be effective on December 31, 2027.



Effective August 1, 2023.

(Amends R.S. 14:46.2(F)(1); adds R.S. 14:18.1 and 46.2(F)(4), C.Cr.P. Art. 890.1(F), 926.4, 930.3(9), and 930.8(A)(7), and C.E. Art. 707)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Change eligibility of victim who may assert justification defense.
2. Delete language allowing for retroactivity of justification defense.
3. Clarify that victims of human trafficking are eligible to assert defense.
4. Add language for post-conviction relief in certain circumstances.