

2019 Regular Session

SENATE BILL NO. 156

BY SENATORS RISER AND MIZELL AND REPRESENTATIVE JACKSON

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

DOMESTIC VIOLENCE. Provides for access to criminal history information in civil cases of domestic violence, human trafficking, and sexual assault. (8/1/19)

1 AN ACT

2 To amend and reenact R.S. 15:587.7 and to enact R.S. 15:587.8, relative to access in civil

3 cases to the criminal history system; to provide for nonprofit and for profit volunteer

4 and qualified entities; to provide for access to criminal history information in civil

5 case of domestic violence, human trafficking, and sexual assault; to provide for

6 certain licensed attorneys to obtain criminal history system information in civil cases

7 involving allegations of domestic violence; to provide for certain licensed attorneys

8 to obtain criminal history system information in civil cases involving allegations of

9 human trafficking; to provide for certain licensed attorneys to obtain criminal history

10 system information in civil cases involving allegations of sexual assault; to provide

11 for pro se petitioners; to provide for definitions; to provide for confidentiality; and

12 to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 15:587.7 is hereby amended and reenacted and R.S. 15:587.8 is
15 hereby enacted to read as follows:

16 §587.7. ~~Volunteer~~ **Nonprofit and for profit volunteer and qualified entities;**
17 **volunteer** and employee; criminal history system

1 A. The Louisiana Bureau of Criminal Identification and Information shall
2 implement a ~~volunteer and employee~~ criminal history system to allow qualified
3 entities to access state and federal criminal history records on certain individuals in
4 the absence of specific statutory provisions regarding access to criminal history
5 record information to allow qualified entities to receive criminal background
6 checks on their volunteers and employees.

7 B. For purposes of this Section, the following definitions shall apply:

8 (1) "Bureau" means the Louisiana Bureau of Criminal Identification and
9 Information located within the Department of Public Safety and Corrections, public
10 safety services, office of state police.

11 (2) "Care" means treatment, education, training, instruction, supervision, or
12 recreation services provided to children, the elderly, or individuals with disabilities.

13 (3) "Individual" means a person who meets the following criteria:

14 (a) ~~has~~**Has**, seeks to have, or may have access to children, the elderly, or
15 individuals with disabilities, victims of domestic violence, victims of human
16 trafficking, or victims of sexual assault who are served by a qualified entity ~~who~~
17 and such person meets ~~either~~ any of the following requirements:

18 (i) ~~Is employed by, or volunteers with, or seeks to be employed by or~~
19 ~~volunteer with, a qualified entity~~ a current or prospective employee or volunteer
20 of a qualified entity.

21 ~~(b)(ii) Owns or operates, or seeks to own or operate, a qualified entity~~ Is a
22 current or prospective owner of a qualified entity.

23 (4) "Individuals with disabilities" means persons with a mental or physical
24 impairment who require assistance to perform one or more daily living tasks.

25 (5) "Qualified entity" means a business or organization, whether public or
26 private, operated for profit, operated ~~not-for-profit~~ as a nonprofit, or voluntary,
27 which provides care or care placement services or which provides shelter or
28 assistance to victims of domestic violence, human trafficking or sexual assault,
29 including a business or organization that licenses or certifies individuals to provide

1 care or care placement services.

2 ~~BC.~~(1) A qualified entity must register with the bureau before submitting a
3 request for criminal history records ~~under~~ **pursuant to** this Section.

4 (2) Each qualified entity may require an individual **who is a current or**
5 **prospective volunteer, employee, or owner of a qualified entity** to submit to a
6 criminal history records check to be conducted by the bureau. Fingerprints and other
7 identifying information from the individual shall be submitted to the bureau by the
8 individual.

9 (3) When a criminal history records check is requested by a qualified entity
10 pursuant to Paragraph (1) of this Subsection, the bureau shall provide the qualified
11 entity with the state criminal history ~~record~~ **records** information of the individual
12 subject to the inquiry. In addition, when the qualified entity requests national
13 criminal history records checks, the bureau shall forward the fingerprints to the
14 Federal Bureau of Investigation for a national criminal history records check and
15 shall provide the qualified entity with the national criminal history record
16 information of the individual subject to the inquiry.

17 ~~CD.~~ National and state criminal history records checks **which** are to be used
18 by the qualified entity to determine the suitability of the individual to have access to
19 children, the elderly, ~~or~~ individuals with disabilities, **victims of domestic violence,**
20 **victims of human trafficking, or victims of sexual assault** served by the qualified
21 entity. The determination of suitability shall be solely made by the qualified entity.
22 This Section does not require the bureau to make a determination on behalf of any
23 qualified entity.

24 ~~DE.~~ The cost of providing the information required under this Section shall
25 be charged by the bureau, as specified in R.S. 15:587(B), to the individual subject
26 to the inquiry **or the qualified entity, subject to the provisions of R.S. 23:897,** for
27 furnishing information contained in the bureau's criminal history and identification
28 files, including any additional costs of providing the national criminal history records
29 check which pertain to the individual.

1 public safety services, office of state police.

2 (3) "Civil case" means a case filed in family court or other court of
3 competent jurisdiction where civil cases are heard related to allegations of
4 domestic violence, family violence, violence against a child, violence against a
5 spouse, sexual assault, or human trafficking, including but not limited to all of
6 the following:

7 (a) A civil case for a protective order sought pursuant to R.S. 9:361 et
8 seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., R.S.
9 46:2181 et seq., Children's Code Article 1564 et seq., Code of Civil Procedure
10 Articles 3604 and 3607.1.

11 (b) A civil case whereby evidence is admissible, pursuant to Louisiana
12 Code of Evidence Article 412.5, related to acts of domestic abuse as defined in
13 R.S. 46:2132, family violence as defined in R.S. 9:362, or sexual abuse as defined
14 in R.S. 9:362, concerning defendant's commission of a crime.

15 (c) A civil case to obtain recovery and damages for a victim of human
16 trafficking, pursuant to 18 U.S.C. §1595, or any other civil proceeding involving
17 the victims of human trafficking.

18 (d) A civil case filed pursuant to Title V of Book I of the Louisiana Civil
19 Code.

20 (4) "Individual" means a person who is a party to or a witness in a civil
21 case provided for in Paragraph (3) of this Subsection.

22 (5) "Pro se litigant" is a litigant or party representing themselves in
23 court without the assistance of an attorney.

24 C.(1) An attorney, or his licensed investigator who is assigned to the case
25 and who is subject to the provisions of R.S. 15:587(A)(1)(c), may submit a
26 request for a criminal history records check to be conducted by the bureau
27 related to a case in which the attorney is counsel of record in a civil case. The
28 attorney shall submit identifying information related to the individual to the
29 bureau including the full legal name, date of birth, and any other identifying

1 information that the attorney may possess.

2 (2)(a) In addition to the individual's identifying information, the attorney
3 shall submit in his letter of request all of the following information related to the
4 case:

5 (i) The name and the Louisiana State Bar Association roll number of the
6 attorney making the request.

7 (ii) The name of the case and the judicial district of the court for which
8 the attorney is making the request.

9 (b) If the attorney or his licensed investigator wilfully or intentionally
10 misrepresents the civil case information required in this Paragraph, the
11 attorney or his licensed investigator shall be subject to criminal prosecution for
12 filing false public records pursuant to R.S. 14:133.

13 D.(1) In order to ensure equal protection under the law, a pro se litigant
14 may obtain the same information that an attorney may obtain in Subsection C
15 of this Section so long as the pro se litigant obtains an ex parte court order from
16 the judge assigned to the civil case, in which the pro se litigant is a party,
17 authorizing the pro se litigant to obtain criminal history information on the
18 defendant or witness to the civil litigation. The pro se litigant may then submit
19 the judge's order for a request for a criminal history records check to be
20 conducted by the bureau related to the civil case in which the pro se litigant is
21 a party to the civil case. The pro se litigant shall submit identifying information
22 related to the individual to the bureau including the full legal name, date of
23 birth, and any other identifying information that the pro se litigant may possess.

24 (2) In addition to the individual's identifying information, the pro se
25 litigant shall submit in his letter the name of the case and the judicial district of
26 the court for which the pro se litigant is making the request along with the
27 judge's order.

28 (3) If the pro se litigant wilfully or intentionally misrepresents the civil
29 case information required in this Paragraph, the pro se litigant shall be subject

1 to criminal prosecution for filing false public records pursuant to R.S. 14:133.

2 E. When a criminal history records check is requested by an attorney or
 3 pro se litigant pursuant to this Section, the bureau shall provide the attorney or
 4 pro se litigant with the state criminal history record information of the
 5 individual subject to the inquiry. In addition, when the attorney or pro se
 6 litigant requests a national criminal history records check, the bureau shall
 7 forward the identifying information to the Federal Bureau of Investigation for
 8 a national criminal history records check and shall provide the attorney or pro
 9 se litigant with the national criminal history record information of the
 10 individual subject to the inquiry.

11 F. National and state criminal history records checks, obtained pursuant
 12 to this Section, are to be used by the attorney or pro se litigant in conjunction
 13 with the civil case to which the information is sought and may be disclosed only
 14 to the court or opposing counsel or in court proceedings related to the civil case.

15 G. The cost of providing the information required under this Section
 16 shall be charged by the bureau, as specified in R.S. 15:587(B), to the attorney
 17 for furnishing the attorney the information contained in the bureau's criminal
 18 history and identification files, including any additional costs of providing the
 19 national criminal history records check which pertain to the individual.

20 H. The attorney shall maintain the confidentiality of the federal and state
 21 criminal history information and shall only use the information for those
 22 purposes provided for in Subsection D of this Section.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

SB 156 Original

2019 Regular Session

Riser

Present law provides that volunteer agencies, such as churches, charities, not-for-profit and for-profit organizations which provide care or care placement services and agencies that have access to children, the elderly, or individuals with disabilities can obtain a criminal history information background check on it's current or prospective employees and volunteers.

Proposed law retains present law and clarifies that entities which provide shelter or

assistance to victims of domestic violence, human trafficking, and sexual assault to the list of agencies that can obtain a criminal history information background check on it's current or prospective employees and volunteers.

Present law (La. Code of Evid. 412.5) provides that, in a civil case alleging domestic abuse as defined in present law, family violence as defined in present law, or sexual abuse as defined in present law, evidence of the defendant's commission of prior crimes or acts of domestic abuse, family violence, sexual abuse, may be admitted into evidence in such civil case.

Proposed law retains present law and provides that a licensed La. attorney who is counsel of record in civil cases involving a victim of domestic violence, human trafficking, or sexual assault may obtain criminal history records from the La. Bureau of Criminal Investigation related to the defendant and witnesses in that civil case. Proposed law further provides that, in order to ensure equal protection under the law, a pro se litigant may also obtain the same information that an attorney may obtain in proposed law so long as the pro se litigant obtains a court order from the judge assigned to the civil case in which the pro se litigant is a party, authorizing the pro se litigant to obtain criminal history information on another party or witness to the civil litigation.

Present law (R.S. 15:581, et seq.) provides that, in addition to state and local criminal justice agencies, the Louisiana Bureau of Criminal Identification and Information may provide criminal history information to certain individuals who are authorized to obtain such information for civil purposes pursuant to present law, as follows:

- (1) Certain state agencies and municipal or parish governments for certain civil purposes.
- (2) Certain state boards and commissions for certain civil purposes.
- (3) House and Senate Governmental Affairs Committees.
- (4) The Louisiana State Bar Association, the La. Supreme Court for licensing purposes.
- (5) The Louisiana State Board of Private Investigator Examiners for licensing purposes.
- (6) AmeriCorp.
- (7) The legislative auditor for certain civil purposes.
- (8) Employers for purposes of screening job applicants.
- (9) Public and private universities and technical colleges are entitled to obtain the criminal history record of applicants for prospective employees.
- (10) Related to those persons seeking a medical or security exemption from the window tinting regulations of motor vehicles as provided for in present law.
- (11) Volunteer agencies, such as churches, charities, not-for-profit and for-profit organizations which provide care or care placement services.

Proposed law retains present law and adds La. attorneys who are counsel of record to victims in civil cases involving domestic violence, human trafficking, and sexual assault and their licensed investigators to the list of entities who may obtain the criminal history records by paying the fee to the La. Bureau of Criminal Investigation. Proposed law provides that, in order to ensure equal protection under the law, a pro se litigant may also obtain the same information that an attorney may obtain under proposed law so long as the pro se litigant obtains an ex parte court order from the judge assigned to the civil case, in which the pro se

litigant is a party, authorizing the pro se litigant to obtain criminal history information on the defendant or witness to the civil litigation.

Present law (R.S. 23:897) provides that it is unlawful for any public or private employer to require any employee or applicant for employment to pay, or to in any manner pass on to the applicant, or to withhold from an employee's pay the cost of fingerprinting. Present law (R.S. 15:587.7) provides that the bureau is to charge the individual employee or volunteer of the qualified entity the costs of the criminal history background check and present law further provides that a qualified entity may submit a fingerprint for the background check.

Proposed law retains present law but clarifies that the qualified entity is responsible for the costs associated with collecting the fingerprint in order to obtain the criminal background check in compliance with present law.

Effective August 1, 2019.

(Amends R.S. 15:587.7; adds R.S. 15:587.8)