

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 abuse, dating violence, human trafficking, and sexual assault. (gov sig)

AN ACT

To amend and reenact R.S. 15:587.7(D) and to enact R.S. 15:587.8, relative to access in civil cases to the criminal history system; to provide for certain nonprofit and for profit volunteer and qualified entities; to provide for access to state criminal history information in civil case of domestic violence, human trafficking, dating violence and sexual assault; to provide for certain licensed attorneys to obtain state criminal history system information in civil cases involving allegations of domestic abuse; to provide for certain licensed attorneys to obtain state criminal history system information in civil cases involving allegations of human trafficking; to provide for certain licensed attorneys to obtain state criminal history system information in civil cases involving dating violence; to provide for certain licensed attorneys to obtain state criminal history system information in civil cases involving allegations of sexual assault; to provide for pro se petitioners; to provide for definitions; to provide for confidentiality; to prohibit certain causes of action; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 15:587.7(D) is hereby amended and reenacted and R.S. 15:587.8 is

1 hereby enacted to read as follows:

2 §587.7. Volunteer and employee criminal history system

3 * * *

4 D. The cost of providing the information required under this Section shall be
5 charged by the bureau, as specified in R.S. 15:587(B), to the individual subject to the
6 inquiry **or the qualified entity, subject to the provisions of R.S. 23:897,** for
7 furnishing information contained in the bureau's criminal history and identification
8 files, including any additional costs of providing the national criminal history records
9 check which pertain to the individual.

10 * * *

11 **§587.8. Access to criminal history system for victims of domestic abuse, victims**
12 **of human trafficking, victims of dating violence, and victims of**
13 **sexual assault.**

14 **A. In order to protect the integrity and the security of the family court**
15 **and civil court system and in order to obtain evidence in furtherance of Code**
16 **of Evidence Article 412.5, a licensed attorney who is counsel of record in a case**
17 **involving a victim of domestic abuse, human trafficking, dating violence, or**
18 **sexual assault shall be allowed to access state criminal history records on a**
19 **certain individual who is a defendant or a witness in the civil cases in which the**
20 **attorney is counsel of record.**

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

22 **(1) "Attorney" means an attorney who is licensed by the Louisiana State**
23 **Bar Association and who is the counsel of record in a civil case as defined in**
24 **Paragraph (3) of this Subsection.**

25 **(2) "Bureau" means the Louisiana Bureau of Criminal Identification and**
26 **Information located within the Department of Public Safety and Corrections,**
27 **public safety services, office of state police.**

28 **(3) "Civil case" means a case filed in family court or other court of**
29 **competent jurisdiction where civil cases are heard related to allegations of**

1 domestic abuse, dating violence, family violence, violence against a child,
2 violence against a spouse, sexual assault, or human trafficking, including but
3 not limited to all of the following:

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

8 (b) A civil case whereby evidence is admissible, pursuant to Louisiana
9 Code of Evidence Article 412.5, related to acts of domestic abuse as defined in
10 R.S. 46:2132, family violence as defined in R.S. 9:362, dating violence as defined
11 in R.S. 46:2151(C), or sexual abuse as defined in R.S. 9:362.

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

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

17 (4) "Criminal history records" means the state criminal history records
18 maintained by the bureau.

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

21 (6) "Pro se litigant" is a party representing himself.

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

29 (2)(a) In addition to the individual's identifying information, the attorney

1 shall submit in his letter of request to the sheriff all of the following information
2 related to the case:

3 (i) The name and the Louisiana State Bar Association bar roll number
4 of the attorney making the request.

5 (ii) The name of the case, the suit number, and the judicial district of the
6 court for which the attorney is making the request.

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

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

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

26 (3) If the pro se litigant wilfully or intentionally misrepresents the civil
27 case information required in this Paragraph, the pro se litigant shall be subject
28 to criminal prosecution for filing false public records pursuant to R.S. 14:133.

29 E. When a criminal history records check is requested by an attorney or

1 his licensed investigator or a pro se litigant pursuant to this Section, the sheriff
2 shall provide the attorney or his licensed investigator or the pro se litigant with
3 the state criminal history record information of the individual subject to the
4 inquiry.

5 F. State criminal history records checks, obtained pursuant to this
6 Section, are to be used by the attorney or pro se litigant in conjunction with the
7 civil case to which the information is sought and may be disclosed only to the
8 court or opposing counsel or in court proceedings related to the civil case.

9 G.(1) The cost of providing the information required under this Section
10 shall be charged by the sheriff to the requesting person as that amount is
11 specified in R.S. 15:587.

12 (2) When the sheriff performs the criminal history records check
13 pursuant to this Section, he shall enter the code "D" in the question space
14 concerning the purpose of the inquiry so that the bureau may record the nature
15 of the inquiry for auditing purposes.

16 H. The attorney, licensed investigator, pro se litigant, and any other
17 person with access to the information shall maintain the confidentiality of the
18 state criminal history information and shall use the information only for those
19 purposes provided for in this Section.

20 I. No person shall maintain a cause of action for liability against the
21 state, the sheriff, any political subdivision of the state, or any agency, officer,
22 deputy, or employee of the state, the sheriff, or a political subdivision for
23 providing the information requested in accordance with this Section.

24 Section 2. This Act shall become effective upon signature by the governor
25 or, if not signed by the governor, upon expiration of the time for bills to become law
26 without signature by the governor, as provided by Article III, Section 18 of the
27 Constitution of Louisiana. If vetoed by the governor and subsequently approved by
28 the legislature, this Act shall become effective on the day following such approval.

The original instrument was prepared by Carla S. Roberts. The following digest, which does not constitute a part of the legislative instrument, was prepared by Michael Bell.

DIGEST

SB 156 Reengrossed

2019 Regular Session

Riser

Present law requires the Louisiana Bureau of Criminal Identification and Information (bureau) to maintain a volunteer and employee criminal history information system to allow qualified entities to access state and federal criminal history records on certain individuals who volunteer or work with children, the elderly, and individuals with disabilities. Defines "qualified entities" as a business or organization, whether public or private, operated for profit, operated not-for-profit, or voluntary, which provides care or care placement services, including a business or organization that licenses or certifies individuals to provide care or care placement services, for children, the elderly, or individuals with disabilities.

Proposed law retains present law.

Present law provides that the cost of providing the information to the qualified entity shall be charged by the bureau to the individual subject to the inquiry, including any additional costs of providing the national criminal history records check.

Proposed law retains present law and also authorizes the bureau to charge the costs to the qualified entity provided the provisions of labor law that prohibit an employer from passing on the costs of a record to an employee or applicant as a condition of employment are not violated.

Proposed law provides access to the criminal history system for victims of domestic abuse, dating violence, human trafficking, and sexual assault. Provides that a licensed attorney who is counsel of record in a case involving a victim of domestic abuse, dating violence, human trafficking, or sexual assault shall be allowed to access state criminal history records on a certain individual who is a defendant or a witness in the civil cases in which the attorney is counsel of record.

Proposed law defines "attorney", "bureau", "civil case", "criminal history records", "individual", and "pro se litigant".

Proposed law provides that an attorney, or his licensed investigator who is assigned to the case, may submit a request for a criminal history records check to be conducted by the sheriff. The attorney or his licensed investigator submits identifying information related to the individual to the sheriff including the full legal name, date of birth, or any other identifying information that the attorney may possess. Requires the attorney also submit in his letter of request all of the following information related to the case:

- (1) The name and the Louisiana State Bar Association bar roll number of the attorney making the request.
- (2) The name of the case, suit number, and the judicial district of the court for which the attorney is making the request.

Proposed law provides that if the attorney or his licensed investigator wilfully or intentionally misrepresents the civil case information, the attorney or his licensed investigator shall be subject to criminal prosecution for filing false public records.

Proposed law authorizes a pro se litigant to obtain the same information that an attorney may obtain 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. Provides for the pro se litigant to submit the judge's order for a request for a criminal history records check to be conducted by the sheriff and requires the pro se litigant to submit identifying information related to the individual including the full legal name, date of birth, and any other identifying information that the pro se litigant may possess.

Proposed law requires that in addition to the individual's identifying information, the pro se litigant must submit in his letter the name of the case, the suit number, and the judicial district of the court for which the pro se litigant is making the request along with the judge's order. Provides that if the pro se litigant wilfully or intentionally misrepresents the civil case information, the pro se litigant shall be subject to criminal prosecution for filing false public records.

Proposed law provides that when a criminal history records check is requested by an attorney, investigator, or pro se litigant, the sheriff must provide the state criminal history record information of the individual subject to the inquiry.

Proposed law provides that state criminal history records checks are to be used by the attorney or pro se litigant in conjunction with the civil case and may be disclosed only to the court or opposing counsel or in court proceedings related to the civil case.

Proposed law provides that the cost of providing the information shall be charged by the sheriff to the requesting person as provided in present law.

Proposed law requires the sheriff performing the criminal history records check to enter the code "D" in the question space concerning the purpose of the inquiry so that the bureau may record the nature of the request for auditing purposes.

Proposed law provides that the attorney, investigator, pro se litigant, and any other person shall maintain the confidentiality of the state criminal history information and shall use the information only for those purposes provided for in proposed law.

Proposed law provides that no person shall maintain a cause of action for liability against the state, the sheriff, any political subdivision of the state, or any agency, officer, deputy, or employee of the state, the sheriff, or a political subdivision for providing the information requested in accordance with proposed law.

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

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

Summary of Amendments Adopted by Senate

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

1. Removes provisions adding victims of domestic violence, human trafficking and sexual assault to present law provisions regarding criminal background checks on volunteers and employees who work with children, the elderly, and individuals with disabilities.
2. Adds victims of dating violence to proposed law regarding victims or domestic abuse, human trafficking, and sexual assault.
3. Limits access to state criminal history records.

4. Adds licensed investigators associated with the attorney of record to the individuals authorized to access the record.
5. Changes from parties contacting bureau directly to parties accessing the information through the sheriff.
6. Adds suit number to the information required to be included in a request for a record.
7. Adds proposed law provisions prohibiting a cause of action for liability.

Senate Floor Amendments to engrossed bill

1. Defines "Pro se litigant" as a single person.
2. Specifies that the attorney's bar roll number shall be submitted with the request.
3. Makes technical changes.