

Regular Session, 2009

HOUSE BILL NO. 33

BY REPRESENTATIVES LEGER, WHITE, AND BROSSETT

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

CRIMINAL/PROCESS: Enacts the Witness Protection Services Act

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AN ACT

To enact Chapter 15 of Title 15 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 15:1501 through 1514, and R.S. 36:4(I) and to repeal R.S. 15:262, relative to witness protection; to enact the Witness Protection Services Act; to provide for the development and administration of the witness protection services program; to provide for definitions; to provide for legislative findings; to create the Witness Protection Services Board within the office of the governor; to provide for the membership of the board; to provide for the powers and duties of the board; to authorize the receipt of per diem by certain members of the board; to provide for the purposes of the program; to provide for the components of the program; to provide procedures for obtaining witness protection services; to provide for applicability; to provide for immunity from lawsuits resulting from the delivery or failure to deliver witness protection services; to provide that no right or cause of action is created by the provisions of this Act; to provide for implementation; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 15 of Title 15 of the Louisiana Revised Statutes of 1950, comprised of R.S. 15:1501 through 1514, is hereby enacted to read as follows:

§1501. Short title

This Chapter shall be referred to and may be cited as the "Witness Protection Services Act".

1        §1502. Legislative findings

2                The legislature finds and declares that full and voluntary cooperation with  
3        state and local law enforcement agencies by victims of and witnesses to crimes is  
4        imperative for the general effectiveness of the criminal justice system and the  
5        protection of witnesses is essential to obtaining that cooperation.

6        §1503. Definitions

7                For the purposes of this Chapter, the following words shall have the  
8        following meanings:

9                (1) "Board" means the witness protection services board established in R.S.  
10        15:1504.

11                (2) "Critical witness" means any witness who is reasonably expected to give  
12        testimony that is, in the judgment of the prosecuting attorney, essential to a criminal  
13        investigation or proceeding or the immediate family of a witness.

14                (3) "Immediate family of a witness" means a spouse, parent, child, stepchild,  
15        sibling, or legal representative of the victim, except when such person is in custody  
16        for an offense or is the defendant.

17                (4) "Prosecuting attorney" means the district attorney, assistant district  
18        attorney, attorney general, or an attorney with prosecutorial authority for a local  
19        governing authority.

20                (5) "Witness" means either of the following:

21                (a) Any person who is a victim of conduct defined as a crime under any law  
22        of this state, another state, or the United States.

23                (b) Any person who has testified or is expected to testify for the prosecution  
24        in a criminal or civil proceeding, or who, by reason of having relevant information,  
25        is subject to call or likely to be called as a witness for the prosecution in a criminal  
26        or civil proceeding, whether or not any action or proceeding has yet been  
27        commenced.

1        §1504. Witness Protection Services Board; composition; powers and duties

2            A.(1) The Louisiana Witness Protection Services Board is hereby created  
3        and established within the office of the governor and shall provide for the  
4        supervision, administration, and delivery of witness protection services. The board  
5        shall be a body corporate with the power to sue and be sued.

6            (2) The board and its agents and employees shall be subject to the Code of  
7        Governmental Ethics.

8            (3) Meetings, actions, and deliberations of the board which do not pertain to  
9        the identity or the awarding of protection services to particular witnesses shall be  
10       subject to the law relative to public records and open meetings.

11           B. The board shall be comprised of nine members and shall be domiciled in  
12       East Baton Rouge Parish.

13           C. Six members of the board shall be comprised as follows:

14           (1) The secretary of the Department of Public Safety and Corrections, or his  
15       designee.

16           (2) The superintendent of the office of state police, or his designee.

17           (3) The attorney general, or his designee.

18           (4) The chief justice of the Supreme Court of Louisiana shall appoint one  
19       member who shall be a retired judge with criminal law experience.

20           (5) The president of the Senate shall appoint one member from the standing  
21       committee of the Senate having criminal law and procedure subject matter  
22       jurisdiction.

23           (6) The speaker of the House of Representatives shall appoint one member  
24       from the standing committee of the House of Representatives having criminal law  
25       and procedure subject matter jurisdiction.

26           D. The governor shall appoint three members in accordance with the  
27       following provisions:

28           (1) One member shall be appointed from a list of three nominees submitted  
29       by the Louisiana Sheriffs' Association.

1           (2) One member shall be appointed from a list of three nominees submitted  
2           by the Louisiana Association of Chiefs of Police.

3           (3) One member shall be appointed from a list of three nominees submitted  
4           by the Louisiana District Attorneys' Association.

5           E. Five members shall constitute a quorum, and all actions of the board shall  
6           require the affirmative vote of at least five members.

7           F. The governor shall appoint the chairman of the board, and the board shall  
8           annually elect such other officers from among its members as the board deems  
9           appropriate.

10          G. The board shall meet at such times and places as may be fixed by the  
11          board.

12          H. Members, other than the secretaries or their designees, or employees of  
13          the state, may receive a per diem of seventy-five dollars for each day spent in actual  
14          attendance of meetings of the board. Members may also receive a mileage allowance  
15          for mileage traveled in attending meetings of the board. The mileage allowance shall  
16          be fixed by the board in an amount not to exceed the mileage rate for state  
17          employees.

18          I.(1) The board may employ an executive director and such other personnel  
19          as it deems necessary in its administration of this Chapter.

20          (2) The board may appoint such committees or persons as it deems necessary  
21          to advise or assist it in the administration of this Chapter.

22          (3) The board may retain its own counsel to advise and assist it.

23          (4) The board may incur all necessary and proper expenses.

24          (5) The board may adopt all rules necessary to implement the provisions of  
25          this Chapter. All rules shall be adopted in accordance with the Administrative  
26          Procedure Act.

27          J. The board shall establish procedures to maximize federal funds for witness  
28          protection services.

1           K. The board shall oversee the state's witness protection services program  
2           and coordinate the efforts of state and local law enforcement agencies to protect the  
3           health, safety, and welfare of witnesses or immediate family members of witnesses,  
4           including but not limited to the administration and approval of funding for witness  
5           protection services.

6           §1505. Board immunity

7           A. The board, its members, and its agents shall be immune from personal  
8           liability for actions taken in good faith in the discharge of the board's responsibilities.

9           B. The state shall hold the board, its members, and its agents harmless from  
10          all costs, damages, and attorney fees arising from claims and suits against them with  
11          respect to matters to which immunity applies.

12          §1506. Protection services provided to critical witnesses; notice to defense counsel

13          A. Protection services provided to a critical witness or the immediate family  
14          of a critical witness may include but not be limited to any of the following:

15                 (1) Any necessary armed protection or escort, marked or unmarked  
16                 surveillance, or periodic visits or contact by law enforcement officials prior, during,  
17                 or subsequent to a criminal proceeding.

18                 (2) Physical relocation to an alternate shelter, housing, or residence.

19                 (3) Reasonable housing expenses.

20                 (4) Transportation or storage of personal possessions.

21                 (5) Basic living expenses.

22                 (6) Assistance in assumption of a new identity and relocation.

23                 (7) Petition for a protection order on any individual identified as a threat to  
24          a critical witness.

25          B. Any protection services provided to a critical witness shall be made  
26          known to defense counsel as provided by law.

27          §1507. Petition requesting witness protection services

28          A. In any criminal investigation or proceeding, the prosecuting attorney with  
29          jurisdiction over the investigation or proceeding may file a petition with the board

1 requesting witness protection services for a critical witness if the prosecuting  
2 attorney certifies that such witness's participation in the investigation or proceeding  
3 places the witness at risk of harm, including but not limited to intimidation or  
4 retaliatory violence.

5 B. The petition shall include a proposed plan for protection services which  
6 shall include but not be limited to projected costs, method of protection, and likely  
7 duration of services.

8 C. The board shall review the petition as soon as possible and if, by a vote  
9 of five or more board members, it finds that the petition and plan comply with the  
10 rules and regulations established by the board, the board shall assist the prosecuting  
11 attorney to coordinate the efforts of state and local agencies to secure witness  
12 protection services.

13 D. The board shall, subject to appropriation, reimburse the prosecuting  
14 attorney for any witness protection related costs that comply with the regulations and  
15 guidelines established by the board.

16 §1508. Temporary witness protection services; exigent circumstances

17 A. If a prosecuting attorney determines that exigent circumstances exist  
18 regarding an imminent threat to the safety of a critical witness, he may take any  
19 appropriate temporary action he determines is necessary to protect the safety of the  
20 witness without prior approval of the board.

21 B. The prosecuting attorney shall inform the board of the action taken and  
22 the related costs within forty-eight hours. Any such costs, which would otherwise  
23 be in compliance with the rules and regulations established by the board pursuant to  
24 the provisions of this Chapter, may be reimbursed to the prosecuting attorney.

25 §1509. Written memorandum of understanding; persons required to sign; criteria

26 A. Before providing witness protection services to any critical witness under  
27 this Chapter, except where it is determined that temporary protection services are  
28 necessary pursuant to R.S. 15:1507, the prosecuting attorney shall enter into a  
29 written memorandum of understanding with the witness.

1           B. If temporary protection services have been provided pursuant to R.S.  
2           15:1507, a written memorandum of understanding shall be entered into as soon as  
3           practicable.

4           C. The written memorandum of understanding shall be signed by the  
5           prosecuting attorney or his designee, the witness to be afforded protection services,  
6           the tutor or legal guardian of the witness if the witness is a minor, and the attorney  
7           representing the witness if the witness is represented by counsel.

8           D. The written memorandum of understanding shall not be considered a  
9           grant of immunity from criminal prosecution.

10          E. The written memorandum of understanding shall include the  
11          responsibilities agreed to by the state in providing protection services and the  
12          responsibilities agreed to by the witness in receiving protection services.

13          F. The written memorandum of understanding shall provide that the witness  
14          receiving protection services agrees as a condition of receiving those services to:

15                (1) Provide complete and truthful information to all relevant law  
16                enforcement officials related to all relevant investigations and to testify completely  
17                and truthfully in all appropriate proceedings.

18                (2) Not commit any crime.

19                (3) Take all necessary precautions to avoid making known to others his  
20                participation in the witness protection services program or the provision of protection  
21                services under such program.

22                (4) Comply with any legal obligations or civil judgments against the witness.

23                (5) Cooperate with all reasonable requests of officers and employees of the  
24                state who are providing protection services under this Chapter.

25                (6) Designate another person to act as an agent for the service of process.  
26                Under no circumstances shall the person so designated be an employee of the  
27                prosecuting attorney or other law enforcement agency or be a member of or perform  
28                duties on behalf of the witness protection services board.

1           (7) Make a sworn statement of all outstanding legal obligations, including  
2           obligations concerning child custody and visitation, and child support.

3           (8) Disclose any probation or parole conditions, obligations, or  
4           responsibilities.

5           (9) Regularly inform the prosecuting attorney of the activities and current  
6           address of the witness.

7           (10) Comply with such other specific conditions as are appropriate, stated  
8           directly and without ambiguity, so as to be understandable to a reasonable man.

9           G. The written memorandum of understanding shall provide that the state  
10          agrees to:

11          (1) Provide the names and telephone numbers of representatives of the  
12          prosecuting attorney or law enforcement personnel to contact if the witness has  
13          questions or concerns related to the protection services or the safety of the witness.

14          (2) Provide the protection services that the prosecuting attorney has  
15          requested if approved by the board in accordance with this Chapter.

16          (3) Provide the procedures to be followed, if there is a determination by the  
17          prosecuting attorney that there has occurred a material breach of the memorandum  
18          of understanding, as established by the prosecuting attorney.

19          §1510. Refusal of protection services; revocation of services upon violation of  
20          memorandum of understanding

21          A. If a witness, after being offered protection services under this Chapter, at  
22          any time declines to receive such services, the prosecuting attorney shall request that  
23          the witness make such refusal in writing, or, if the witness refuses to document such  
24          refusal of services in writing, the prosecuting attorney shall document the refusal and  
25          inform the witness protection services board forthwith that the witness has declined  
26          protection services.

27          B. If a witness violates the terms of the memorandum of understanding set  
28          forth in R.S. 15:1509 or any other condition of receiving witness protection services

1 under this Chapter, the prosecuting attorney may revoke and terminate all protection  
2 services and shall so advise the witness in writing.

3 C. The prosecuting attorney shall notify the board immediately of such  
4 revocation and grounds therefore.

5 §1511. Relocation of critical witness to another public school

6 Notwithstanding any other provision of law to the contrary, if a petition and  
7 plan for witness protection, approved by the witness protection services board,  
8 requires relocation of a critical witness to another public school within or without the  
9 witness's current school system, such relocation shall be effectuated without regard  
10 to any impediment, including but not limited to class capacity limits and  
11 jurisdictional boundaries of any given school district.

12 §1512. Right of action not created; immunity

13 A. It is not the intent of the legislature to create any new right, right of  
14 action, or cause of action or eliminate any right, right of action, or cause of action  
15 existing under current law. Nothing in the provisions of this Chapter shall create,  
16 expressly or by implication, any right, claim, or cause of action in favor of anyone  
17 in connection with the provisions of witness protection services.

18 B. The state, any political subdivision of the state, or any officer or employee  
19 of the state or political subdivision shall not be subject to any civil liability as a result  
20 of any decision to provide or not to provide protection under this Section and shall  
21 be entitled to absolute immunity for any action or inaction in providing or failing to  
22 provide witness protection.

23 §1513. Liaison with United States Marshal's Office; pursuit of federal resources and  
24 funding

25 A. The board shall establish a liaison with the United States Marshal's Office  
26 in order to facilitate the legal processes over which the federal government has sole  
27 authority. The liaison shall coordinate all requests for federal assistance relating to  
28 witness protection.



Proposed law (R.S. 15:1504) creates the Witness Protection Services Board within the office of the governor and provides for the powers and duties of the board.

Proposed law (R.S. 15:1505) provides for immunity for the board and its members in providing or failing to provide witness protection services.

Proposed law (R.S. 15:1506) provides for the following services for witnesses and immediate family members of witnesses:

- (1) Any necessary armed protection or escort, marked or unmarked surveillance, or periodic visits or contact by law enforcement officials prior, during, or subsequent to a criminal proceeding.
- (2) Physical relocation to an alternate shelter, housing, or residence.
- (3) Reasonable housing expenses.
- (4) Transportation or storage of personal possessions.
- (5) Basic living expenses.
- (6) Assistance in assumption of a new identity and relocation.
- (7) Petition for a protective order on any individual identified as a threat to a critical witness.

Proposed law (R.S. 15:1507) provides for the petition procedure for requesting witness protection services.

Proposed law (R.S. 15:1508) provides for temporary witness protection services in exigent circumstances.

Proposed law (R.S. 15:1509) provides for a written memorandum of understanding regarding witness protection services and the agreements between the witness and the state regarding those services.

Proposed law (R.S. 15:1510) provides for the refusal of witness protection services.

Proposed law (R.S. 15:1511) provides for the relocation of witnesses within public schools.

Proposed law (R.S. 15:1512) provides that no right of action is created.

Proposed law (R.S. 15:1513) provides for a liaison with the U.S. Marshal's Office.

Proposed law (R.S. 15:1514) provides for the confidentiality of records regarding witness protection services.

Proposed law shall be implemented to the extent that funds have been appropriated by the legislature or made available through grants or federal funds.

(Adds R.S. 15:1501-1514 and R.S. 36:4(I); Repeals R.S. 15:262)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill.

1. Provides that proposed law is to be implemented upon funding through legislative appropriation or through grants or federal funds.