

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

1 AN ACT

2 To amend and reenact R.S. 44:4.1(B)(7), to enact Chapter 15 of Title 15 of the Louisiana  
3 Revised Statutes of 1950, to be comprised of R.S. 15:1601 through 1614, and R.S.  
4 36:4(I), and to repeal R.S. 15:262, relative to witness protection; to enact the Witness  
5 Protection Services Act; to provide for the development and administration of the  
6 witness protection services program; to provide for definitions; to provide for  
7 legislative findings; to create the Witness Protection Services Board within the office  
8 of the governor; to provide for the membership of the board; to provide for the  
9 powers and duties of the board; to authorize the receipt of per diem by certain  
10 members of the board; to provide for the purposes of the program; to provide for the  
11 components of the program; to provide procedures for obtaining witness protection  
12 services; to provide for applicability; to provide for immunity from lawsuits resulting  
13 from the delivery or failure to deliver witness protection services; to provide that no  
14 right or cause of action is created by the provisions of this Act; to provide for  
15 implementation; to provide public records exceptions; to provide exceptions to the  
16 open meetings laws; and to provide for related matters.

17 Be it enacted by the Legislature of Louisiana:

18 Section 1. Chapter 15 of Title 15 of the Louisiana Revised Statutes of 1950,  
19 comprised of R.S. 15:1601 through 1614, is hereby enacted to read as follows:

1                    CHAPTER 15. WITNESS PROTECTION SERVICES2                    §1601. Short title3                    This Chapter shall be known as and may be cited as the "Witness Protection  
4                    Services Act".5                    §1602. Legislative findings6                    The legislature finds and declares that full and voluntary cooperation with  
7                    state and local law enforcement agencies by witnesses to crimes is imperative for the  
8                    general effectiveness of the criminal justice system and the protection of witnesses  
9                    is essential to obtaining that cooperation.10                  §1603. Definitions11                  For the purposes of this Chapter, the following words shall have the  
12                  following meanings:13                  (1) "Board" means the witness protection services board established in R.S.  
14                  15:1604.15                  (2) "Critical witness" means any witness who is reasonably expected to give  
16                  testimony that is, in the judgment of the prosecuting attorney, essential to a criminal  
17                  investigation or proceeding.18                  (3) "Immediate family" means a spouse, parent, child, stepchild, sibling, or  
19                  legal representative of a critical witness, except when such person is in custody for  
20                  an offense or is the defendant.21                  (4) "Prosecuting attorney" means the district attorney, assistant district  
22                  attorney, attorney general, or an attorney with prosecutorial authority for a local  
23                  governing authority.24                  (5) "Witness" means either of the following:25                  (a) Any person who is a victim of conduct defined as a crime under any law  
26                  of this state, another state, or the United States.27                  (b) Any person who has testified or is expected to testify for the prosecution  
28                  in a criminal proceeding, or who, by reason of having relevant information, is subject

1 to call or likely to be called as a witness for the prosecution in a criminal proceeding,  
2 whether or not any action or proceeding has yet been commenced.

3 §1604. Witness Protection Services Board; composition; powers and duties

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

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

11 (3) Notwithstanding the provisions of R.S. 42:4.1 et seq., the board may  
12 meet in private session to consider and take action on matters concerning the  
13 awarding of protective services to, the identity of, or the location of a critical witness  
14 or any immediate family member of a critical witness.

15 B. The board shall be comprised of seven members and shall be domiciled  
16 in East Baton Rouge Parish.

17 C. The board shall be comprised of five members as follows:

18 (1) The superintendent of the office of state police or his designee, who shall  
19 be a law enforcement officer.

20 (2) The attorney general or his designee, who shall be an attorney employed  
21 in the office of the attorney general.

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

24 (4) The president of the Louisiana Senate shall appoint one member of the  
25 Senate.

26 (5) The speaker of the Louisiana House of Representatives shall appoint one  
27 member of the House of Representatives.

28 D. The governor shall appoint two members in accordance with the  
29 following provisions:

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

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

5           E. Four members shall constitute a quorum, and all actions of the board shall  
6           require the affirmative vote of at least four 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. Notwithstanding R.S. 42:4.1 et seq., the board may conduct meetings  
13          through telecommunication and teleconference.

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

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

18          (3) The board may incur all necessary and proper expenses.

19          (4) The board may adopt all rules necessary to implement the provisions of  
20          this Chapter. All rules shall be adopted in accordance with the Administrative  
21          Procedure Act.

22          J. The board shall establish procedures to maximize federal funds for witness  
23          protection services.

24          K. The board shall oversee the state's witness protection services program  
25          and coordinate the efforts of state and local law enforcement agencies to protect the  
26          health, safety, and welfare of critical witnesses or immediate family members of  
27          critical witnesses, including but not limited to the administration and approval of  
28          funding for witness protection services.

1           L. The attorney general or his designee shall be the legal advisor to the  
2           board, shall counsel and advise the board, and shall represent the board in all legal  
3           proceedings.

4           §1605. Board immunity

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

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

10          §1606. Protection services provided to critical witnesses; notice to defense counsel

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

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

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

17           (3) Reasonable housing expenses.

18           (4) Transportation or storage of personal possessions.

19           (5) Basic living expenses.

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

21           (7) Petition for a protective order against any individual identified as a threat  
22           to a critical witness.

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

25          §1607. Petition requesting witness protection services

26          A. In any criminal investigation or proceeding, the prosecuting attorney with  
27          jurisdiction over the investigation or proceeding may file a petition with the board  
28          requesting witness protection services for a critical witness if the prosecuting  
29          attorney certifies that such witness's participation in the investigation or proceeding

1 places the witness at risk of harm, including but not limited to intimidation or  
2 retaliatory violence. The identity of the witness shall not be provided to the board  
3 and shall remain confidential.

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

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

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

15 §1608. Temporary witness protection services; exigent circumstances

16 A. If a prosecuting attorney determines that exigent circumstances exist  
17 regarding an imminent threat to the safety of a critical witness or the immediate  
18 family of a critical witness, he may take any appropriate temporary action he  
19 determines is necessary to protect the safety of the critical witness and his immediate  
20 family 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 §1609. Written memorandum of understanding; persons required to sign; criteria

26 A. Before providing witness protection services to any critical witness or his  
27 immediate family under this Chapter, except where it is determined that temporary  
28 protection services are necessary pursuant to R.S. 15:1607, the prosecuting attorney  
29 shall enter into a written memorandum of understanding with the critical witness and

1        any person in his immediate family who has attained the age of majority and who  
2        will be receiving protective services.

3                B. If temporary protection services have been provided pursuant to R.S.  
4        15:1607, the critical witness and any person in his immediate family who has  
5        attained the age of majority and who is receiving protective services shall enter into  
6        a written memorandum of understanding as soon as practicable.

7                (C)(1) The critical witness's written memorandum of understanding shall be  
8        signed by the prosecuting attorney or his designee, the critical witness to be afforded  
9        protection services, the tutor or legal guardian of the critical witness if the critical  
10       witness is a minor, and the attorney representing the critical witness if the critical  
11       witness is represented by counsel.

12               (2) Any immediate family member who has attained the age of majority and  
13       who will be receiving protective services shall execute a written memorandum of  
14       understanding in compliance with the provisions of this Section and such  
15       memorandum shall be signed by the immediate family member and the prosecuting  
16       attorney or his designee.

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

19               E. The written memorandum of understanding shall include the  
20       responsibilities agreed to by the state in providing protection services and the  
21       responsibilities agreed to by the critical witness or his immediate family in receiving  
22       protection services.

23               F. The written memorandum of understanding shall provide that the  
24       signatory party receiving protection services agrees as a condition of receiving those  
25       services to:

26               (1) Provide complete and truthful information to all relevant law  
27       enforcement officials related to all relevant investigations and to testify completely  
28       and truthfully in all appropriate proceedings.

29               (2) Not commit any crime.

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

4           (4) Comply with any legal obligations or civil judgments.

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

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

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

13          (8) Disclose any probation or parole conditions, obligations, or  
14          responsibilities.

15          (9) Regularly inform the prosecuting attorney of his activities and current  
16          address.

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

19          G. The written memorandum of understanding shall provide that the state  
20          agrees to:

21          (1) Provide the names and telephone numbers of representatives of the  
22          prosecuting attorney or law enforcement personnel to contact if the critical witness  
23          or a member of his immediate family receiving protection services has questions or  
24          concerns related to the protection services or to his safety.

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

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

1        §1610. Refusal of protection services; revocation of services upon violation of  
2                    memorandum of understanding

3                    A. If a critical witness or any immediate family member thereof, after being  
4                    offered protection services under this Chapter, at any time declines to receive such  
5                    services, the prosecuting attorney shall request that the critical witness or such  
6                    immediate family member thereof make such refusal in writing, or, if the critical  
7                    witness or immediate family member refuses to document such refusal of services  
8                    in writing, the prosecuting attorney shall document the refusal and inform the  
9                    witness protection services board forthwith that the critical witness or immediate  
10                   family member has declined protection services.

11                   B. If a critical witness or immediate family member receiving protection  
12                   services violates the terms of the memorandum of understanding set forth in R.S.  
13                   15:1609 or any other condition of receiving witness protection services under this  
14                   Chapter, the prosecuting attorney may revoke and terminate all protection services.  
15                   Upon such revocation and termination of protection services the prosecuting attorney  
16                   shall notify the critical witness and his immediate family members in writing of the  
17                   termination of protection.

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

20        §1611. Relocation of critical witness to a public school

21                   Notwithstanding any other provision of law to the contrary, if a petition and  
22                   plan for witness protection, approved by the witness protection services board,  
23                   requires relocation of a critical witness or immediate family member receiving  
24                   protection services to a public school within or without the critical witness's or  
25                   immediate family member's current school system, such relocation shall be  
26                   effectuated without regard to any impediment, including but not limited to class  
27                   capacity limits and attendance zones of any given school district.

1        §1612. Right of action not created; immunity

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

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

12       §1613. Liaison with United States Marshal's Office; pursuit of federal resources and  
13       funding

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

18           B. The board shall pursue all federal sources that may be available for  
19       implementing this Chapter. For that purpose, the board shall establish a liaison with  
20       the United States Department of Justice.

21       §1614. Confidentiality of records

22           A. Any information relating to any witness participating in any program  
23       established pursuant to the provisions of this Chapter shall remain confidential and  
24       shall not be subject to disclosure pursuant to the Louisiana Code of Criminal  
25       Procedure, the Public Records Act as provided under R.S. 44:1 et seq., or any other  
26       provision of state law.

27           B. Information related to the appropriation, allocation, or expenditure of  
28       monies on the program that does not include any information relating to any witness  
29       shall be public and not subject to Subsection A of this Section.

1 Section 2. R.S. 36:4(I) is hereby enacted to read as follows:

2 §4. Structure of executive branch of state government

3 \* \* \*

4 I. The Witness Protection Services Board (R.S. 15:1601 et seq.) shall be  
5 placed within the office of the governor and shall perform and exercise its powers,  
6 duties, functions, and responsibilities as provided by law.

7 \* \* \*

8 Section 3. R.S. 44:4.1(B)(7) is hereby amended and reenacted to read as follows:

9 §4.1. Exceptions

10 \* \* \*

11 B. The legislature further recognizes that there exist exceptions, exemptions,  
12 and limitations to the laws pertaining to public records throughout the revised  
13 statutes and codes of this state. Therefore, the following exceptions, exemptions, and  
14 limitations are hereby continued in effect by incorporation into this Chapter by  
15 citation:

16 \* \* \*

17 (7) R.S. 15:242, 440.6, 477.2, 549, 570(F), 574.12, 578.1, 616, 660, 840.1,  
18 1176, 1204.1, 1614

19 \* \* \*

20 Section 4. R.S. 15:262 is hereby repealed in its entirety.

21 Section 5. The provisions of this Act shall be implemented to the extent that funds  
22 have been appropriated by the legislature or made available through grants or federal funds.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Leger HB No. 33

**Abstract:** Creates the Witness Protection Services Board and provides for protection services for certain witnesses in criminal cases.

Proposed law creates the Witness Protection Services Act.

Proposed law (R.S. 15:1602) establishes legislative findings that the full and voluntary cooperation of witnesses is essential to an effective criminal justice system and that protecting witnesses is necessary in obtaining such cooperation.

Proposed law (R.S. 15:1603) defines "critical witness", "board", "immediate family", "prosecuting attorney", and "witness".

Proposed law (R.S. 15:1604) creates the Witness Protection Services Board within the office of the governor and provides for the powers and duties of the board. The board shall consist of seven members as provided in proposed law and may conduct meetings through telecommunication and teleconference. Further provides that the board shall be subject to open meetings laws except that it may meet in private session to consider or act on matters concerning the identity, location, or award of protection to critical witnesses or their immediate family. Further provides that the attorney general or his designee shall be the legal advisor to the board and shall represent the board in all legal proceedings.

Proposed law (R.S. 15:1605) provides for immunity for the board and its members in providing or failing to provide witness protection services.

Proposed law (R.S. 15:1606) 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 against any individual identified as a threat to a critical witness.

Proposed law (R.S. 15:1607) provides for the petition procedure for requesting witness protection services. Further provides that the identity of any individuals receiving protection services shall not be provided to the board and shall remain confidential.

Proposed law (R.S. 15:1608) provides for temporary witness protection services in exigent circumstances.

Proposed law (R.S. 15:1609) provides for a written memorandum of understanding regarding witness protection services and the agreements between the individuals receiving protection services and the state regarding those services.

Proposed law (R.S. 15:1610) provides for the refusal of witness protection services. Further provides for written documentation of such refusal. Further provides for written notification of termination of protection services by the prosecuting attorney.

Proposed law (R.S. 15:1611) provides for the relocation of witnesses or immediate family thereof to public schools.

Proposed law (R.S. 15:1612) provides that no right of action is created by proposed law.

Proposed law (R.S. 15:1613) provides for liaisons with the U.S. Marshal's Office and the U.S. Department of Justice.

Proposed law (R.S. 15:1614) 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.

(Amends R.S. 44:4.1(B)(7); Adds R.S. 15:1601-1614 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.

Committee Amendments Proposed by House Committee on House and Governmental Affairs to the engrossed bill.

1. Narrows the open meetings exception, so that the board may meet in private session to consider and act on matters relating to the identity, location, or awarding of protection services to a critical witness or any immediate family thereof.
2. Reduces the size of the board from nine to seven total members. Removes the secretary of the Dept. of Public Safety and Corrections or his designee and a gubernatorial appointee.
3. Authorizes the board to conduct meetings through telecommunication and teleconference.
4. Appoints the attorney general as the legal advisor and legal representative of the board.
5. Restricts the access by the board to the names of critical witnesses and immediate family thereof.
6. Removes provisions for compensation of board members.