

# Victims’ Rights in Louisiana: An Overview with Emphasis on Rights for Survivors of Sexual Assault

By Sean Cassidy, Attorney/Legal Advocate,  
*Louisiana Foundation Against Sexual Assault (“LaFASA”)*<sup>1</sup>

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<sup>1</sup> LaFASA is an organization tasked with eliminating sexual violence in Louisiana. We are a coalition agency comprised of several sexual assault crisis and prevention centers throughout Louisiana. Our functions include:

- Education and training with partner centers and allied professional organizations like law enforcement agencies, health care providers, the legal community, and educational institutions to provide trauma-informed perspectives to address even nuanced elements of a sexual assault survivor’s experience;
- Direct advocacy services to survivors of sexual assault to provide emotional support, foster healing and navigate the survivors' chosen post-trauma path;
- Community outreach to engage the public, increase awareness and effect social change in a myriad of issues related to sexual assault;
- Direct legal services to survivors of sexual assault to protect privacy, ensure safety, procure accommodations in housing, work-place and educational contexts, and provide remedies in criminal, civil and family law settings;
- Coordinating with the state’s colleges and universities to address sexual assault needs specific to that setting.

## **I. INTRODUCTION**

Upon being assaulted sexually, survivors experience significant neurobiological trauma that often re-emerges when triggered. Factors that have proven to lessen the effects and symptoms of trauma upon survivors include: being treated with fairness, respect, and dignity, (e.g., being believed from the outset); avoiding delay in seeking redress (e.g., constant continuances); and regaining control by having a voice in their redress, replete with choices at critical stages of the process.

Victims' rights protections in Louisiana seek to reflect these tenets by allowing survivors a voice and some measure of control in order to facilitate healing and seek justice - whatever justice looks like to each particular survivor - in a dignified and respectful setting. The following discussion will cover victims' rights in general in Louisiana, but it will focus more specifically into the experience of the sexual assault survivor.

The Louisiana Constitution provides the basis for victims' rights and even articulates a few basic principles. Victims' rights are statutorily mandated throughout several areas of Louisiana's statutes, so this article pulls from those various points to discuss those rights in the following broadly organized categories.

## II. LOUISIANA CONSTITUTION

**“Any person who is a victim of crime shall be treated with fairness, dignity, and respect, and shall be informed of the rights accorded under this section.”<sup>2</sup>**

The Louisiana Constitution establishes that victims have specifically enumerated rights, including:

- Right to reasonable *notice* and to be *present* and *heard* during all critical stages of pre-conviction and post-conviction proceedings;
- Right to be *informed* upon release or escape of the accused or offender;
- Right to *confer* with the prosecution prior to final disposition of the case;
- Right to *refuse to be interviewed* by the accused or their representative;
- Right to *review* and *comment* upon pre-sentence report;
- Right to seek *restitution*;
- Right to *reasonably prompt resolution* of the case.<sup>3</sup>

The Louisiana Constitution further mandates that evidentiary and procedural laws in Louisiana shall be interpreted in a manner consistent with these enumerated rights.<sup>4</sup> This is important because when a judge is presented with a “close calls” on a procedural or evidentiary issue, it may be helpful to remind them that the state constitution mandates these specific victims’ rights principles *must* be considered.

However, the enforceability of these rights does not enjoy robust constitutional support. The violation of these rights, in itself, cannot be the basis for an appeal or supervisory review in a criminal proceeding, nor will it create the basis for: an award of costs or attorney fees; the appointment of counsel for a victim; a cause of action for damages against the state or its agencies or employees.<sup>5</sup>

Seemingly, the only remedy for violation of victims’ rights, beyond seeking a contempt of court order in some specifically enumerated instances (see *infra*), is filing for a *writ of mandamus*, which is a process of compelling a public officer to perform a ministerial duty required by law.<sup>6</sup> Case law provides that mandamus is “an extraordinary remedy that is only used sparingly.”<sup>7</sup>

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<sup>2</sup> La. Const. Art. I, §25 (1974).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*: “Nothing in this Section shall be construed ... to confer upon any person the right to appeal or seek supervisory review of any judicial decision made in a criminal proceeding. Nothing in this Section shall be the basis for an award of costs or attorney fees, for the appointment of counsel for a victim, or for any cause of action for compensation or damages against the state of Louisiana, a political subdivision, a public agency, or a court, any officer, employee, or agent thereof.”

<sup>6</sup> La. Rev. Stat. 46:1844(U): “Nothing in this Chapter precludes the filing for a writ of mandamus as provided in the Code of Civil Procedure to compel the performance of a ministerial duty required by law.” See also La. Code Civ. Proc. articles 3861-3866 (re: writs of mandamus).

<sup>7</sup> *Lens v. Landrieu* 2016-0639 (La. App. 4 Cir. 12/14/16) 2016 WL 7238978.

### III. STATUTORY “BILL OF RIGHTS” - LA. REV. STAT. 46:1841, *et seq.*

The Louisiana Constitution requires that the legislature “enact laws to implement” provisions discussed above.<sup>8</sup> Louisiana Revised Statutes 46:1841 through 1846 contain many of the state’s victims’ rights provisions and is often referred to as the crime victims’ “bill of rights.”

Article 1841 articulates the legislative intent “to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity, and that the rights extended in this Chapter to victims and witnesses of crime are honored and protected by the law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protection afforded the criminal defendants.”

Article 1843 provides that a victim has rights and is eligible for services under this set of statutes only if the victim reported the crime to law enforcement with seventy-two (72) hours of its occurrence or discovery, unless extenuating circumstances exist for later reporting. *However*, due to a recent statutory revision, victims of sexual assault enjoy these rights whether or not they report to law enforcement or seek assistance from a healthcare provider.<sup>9</sup>

Article 1844 provides the “basic rights” for victims *and* witnesses. These rights include:

- The appropriate law enforcement agency (“LEA”) shall ensure that crime victims and witnesses receive emergency, social, and medical services as soon as possible;<sup>10</sup>
- The Crime Victims Services Bureau (“CVSB”) shall publicize and keep victims and family members informed regarding: successful court appeals; parole committee or pardon board hearings or other release hearings; dates of possible release from physical custody, escape, apprehension or otherwise; and inquiries concerning policies and programs for inmates;<sup>11</sup>
- All LEAs having custody of those accused of sexual offenses (among other listed crimes) shall notify crime victims or designated family members ***who have properly registered*** concerning an arrest, release, posting of bond, escape or re-apprehension.<sup>12</sup> It is important to note that many of these rights do not attach unless a victim properly registers as discussed more fully, *infra*.

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<sup>8</sup> La. Const. Art. I, §25 (1974).

<sup>9</sup> See [Act 337](#), effective August 1, 2017. See revision to Article 1843 and new Article 1845(A)(1).

<sup>10</sup> La. Rev. Stat. 46:1844(A)(1).

<sup>11</sup> La. Rev. Stat. 46:1844(A)(2).

<sup>12</sup> La. Rev. Stat. 46:1844(A)(3).

- If the victim is properly registered, the Clerk of Court shall provide timely “reasonable notice” to a victim/family member of judicial proceedings related to the case;<sup>13</sup>
- The District Attorney (“DA”), prior to trial, shall make reasonable efforts to interview the victim/family member to determine the facts of the case and whether the victim/family member is requesting restitution (see *infra*, Section \_\_ --, which discusses “restitution”);<sup>14</sup>
- All law enforcement/judicial agencies shall provide a private setting for all interviewing of victims of crime. Only persons directly and immediately related to the interviewing of the victim (social worker, psychologist, or other professional, victim advocate) shall be present, unless the victim requests their exclusion;<sup>15</sup>  
***\*This is one section that provides grounds for victim to have their own lawyer present at critical stages;***
- Victim/family member may refuse any requests for interviews with the attorney for the defendant or any employee or agent working for the attorney or defendant. Defendant will need to show “good cause” at a *contradictory hearing* before subpoenaing the victim to testify on behalf of defendant at a *pretrial* hearing. “Willful disregard of the rights of victims and witnesses as enumerated in *this paragraph* may be punishable as contempt of Court”;<sup>16</sup>
- Victim/family member shall have the right to *retain counsel* to confer with law enforcement and judicial agencies regarding the disposition of the victim’s case. The prosecutor “may” confer with the counsel retained by the victim or designated family member in the prosecution of the case. “Case” herein shall mean a criminal matter in which formal charges have been filed by the district attorney’s office;<sup>17</sup>  
***\*This is another section that provides grounds for victim to have their own lawyer present at critical stages;***
- Upon written notification from the victim, the DA’s office shall, within a reasonable period of time following such notification, contact the victim and schedule a conference with the victim/family member in order to obtain their view regarding: the disposition of the case by dismissal, plea, or trial; use of available sentencing alternatives (incarceration, probation, community service, and payment of restitution);<sup>18</sup>

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<sup>13</sup> La. Rev. Stat. 46:1844(B).

<sup>14</sup> La. Rev. Stat. 46:1844(C)(1).

<sup>15</sup> La. Rev. Stat. 46:1844(C)(2).

<sup>16</sup> La. Rev. Stat. 46:1844(C)(3).

<sup>17</sup> La. Rev. Stat. 46:1844(D)(1).

<sup>18</sup> La. Rev. Stat. 46:1844(D)(2).

- Victim/witness, upon request, shall be assisted by judicial and law enforcement agencies to inform employers about potential missed time due to cooperation with criminal proceeding;<sup>19</sup>
- Victim/witnesses who's been scheduled to attend a judicial proceeding shall be notified as soon as possible of any changes;<sup>20</sup>
- The court shall provide, whenever possible, a secure waiting area during court proceedings which does not require victims, witnesses, or victims' families to be in close proximity to the defendants or their family/friends, and *SHALL* provide a secure waiting area in cases involving violent crimes; Court shall also provide designated seating in the courtroom upon request (whenever possible);<sup>21</sup>
- If properly registered with the clerk of court, the victim/family member shall have the right to review and comment on the pre-sentence and post-sentence reports relating the crime against the victim;<sup>22</sup>
- Victim shall be protected at all times by all rules and laws governing the criminal procedure and the admissibility of evidence applicable to criminal proceedings;<sup>23</sup>  
*\*Important note: Victim's attorney can argue in privacy hearing to protect victim's privacy rights;*
- Victim shall have the right to a "speedy disposition and prompt and final conclusion of the case *after* conviction and sentencing."<sup>24</sup> Seemingly, no such right is offered to the victim *prior to* conviction and sentencing. The impact on the victim shall be considered when ruling on a defense motion for continuance.<sup>25</sup>
- At all critical stages of the prosecution, if the victim/family member has registered with the appropriate law enforcement or judicial agency and is present, the court shall determine if the victim or designated family member wishes to make a victim impact statement. The Court shall continue proceeding if notice was requested and proper notice has not been issued;<sup>26</sup>
- Victim/family members shall have the right to make a written and oral victim impact statement as follows: shall be made available to all parties and become part of the record; may be submitted by the DA upon victim's request; may be sealed by the court after review by the parties;

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<sup>19</sup> La. Rev. Stat. 46:1844(E).

<sup>20</sup> La. Rev. Stat. 46:1844(F).

<sup>21</sup> La. Rev. Stat. 46:1844(G).

<sup>22</sup> La. Rev. Stat. 46:1844(H).

<sup>23</sup> La. Rev. Stat. 46:1844(I).

<sup>24</sup> La. Rev. Stat. 46:1844(J).

<sup>25</sup> *Id.*

<sup>26</sup> La. Rev. Stat. 46:1844(K)(1)(a).

- The statutes lay out the rules and parameters regarding victim statements;<sup>27</sup>
- The Court *shall* allow the victim and prosecutor the opportunity to review any pre-sentence investigation reports;<sup>28</sup>
- Court *shall* afford the victim an opportunity to comment at the sentencing hearing;<sup>29</sup>
- All judicial/law enforcement agencies shall expeditiously return any stolen or other personal property to victims/families when no longer needed as evidence.<sup>30</sup> Recent statutory changes provide the victim shall not bear any costs attendant to such a return.<sup>31</sup>
- Restitution: if defendant is found guilty, the court or parole committee *shall require* the defendant to pay restitution to the appropriate party in an amount and manner determined by the court;<sup>32</sup>
- An inmate cannot be eligible for work release until restitution is paid;<sup>33</sup>
- Defendant shall be responsible for all recording fees associated with victim filing a restitution order (victim *shall not* be required to pay);<sup>34</sup>
- Upon filing of victim notice, the Department of Corrections (“DOC”), at the time of an appeal, discharge, or parole of an inmate, shall notify the victim by certified mail of such appeal or release;<sup>35</sup>
- The DOC must notify victim of escape or absconding; if recaptured, must send notice of that within forty-eight (48) hours. State cannot be held liable for failure to provide notice;<sup>36</sup>
- When inmate is within three months of earliest projected release date, a registered victim may contact the CVSB to request a current photo of the inmate; must take “all reasonable steps” to provide a photo at least 10 days prior to release;<sup>37</sup>
- Board of Pardons or committee on parole shall notify the victim/or family and *all persons who file a victim registration and notification form*, as well as the

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<sup>27</sup> La. Rev. Stat. 46:1844(K)(1)(b) & (2).

<sup>28</sup> La. Rev. Stat. 46:1844(K)(3)(a).

<sup>29</sup> La. Rev. Stat. 46:1844(K)(3)(b).

<sup>30</sup> La. Rev. Stat. 46:1844(L).

<sup>31</sup> See [Act 337](#), effective August 1, 2017. See revision to Article 1844(L).

<sup>32</sup> La. Rev. Stat. 46:1844(M)(1).

<sup>33</sup> La. Rev. Stat. 46:1844(M)(2).

<sup>34</sup> La. Rev. Stat. 46:1844(M)(3).

<sup>35</sup> La. Rev. Stat. 46:1844(N)(2).

<sup>36</sup> La. Rev. Stat. 46:1844(N)(3).

<sup>37</sup> La. Rev. Stat. 46:1844(N)(4).

appropriate DA that a hearing has been set for the convicted person. Victim/family have the right to make a statement (written and oral) re: impact of the crime or to rebut evidence put on by convict.<sup>38</sup> Including all who filed a victim registration/notification form covers those victims who may lose their “victim status” by virtue of a defendant reaching a plea deal that drops the charge against a that particular victim;<sup>39</sup>

- All LEAs shall expeditiously investigate all reports of missing children and shall inform the family members of such children of the status of the investigation;<sup>40</sup>
- Victim assistance education and training shall be offered to persons taking courses at law enforcement training facilities;<sup>41</sup>
- Louisiana Commission on Law Enforcement (“LCLE”) shall promulgate uniform victim notice and registration forms which outline and explain the rights and services herein. *The Louisiana Victim Notice and Registration Form can be found [here](#)*;<sup>42</sup>
- “No sentence, plea, conviction, or other final disposition shall be invalidated because of failure to comply with the provisions of this Section.”<sup>43</sup> Again, this language indicates that the penalty for violating these rights is relatively benign.
- Registration: Victim *must* complete a form and file it with the LEA investigating the offense. The form shall be included in documents sent from LEA to DA for prosecution; then from Clerk of Court to the DOC (in the event if conviction and sentencing). All forms to be kept confidential; shall be released only upon court order after contradictory hearing;<sup>44</sup>
- No Cause of Action: nothing in this section shall be construed as creating a cause of action for costs/fees, appointment of counsel for victim, for compensation/damages against the State, political subdivision, public agency, court, or any officer, employee. But “nothing precludes” filing for a *WRIT of MANDAMUS* to compel performance of a ministerial duty required by law;<sup>45</sup>
- Statewide crime victims assistance hotline may be established, jointly operated by CVRB and LCLE;<sup>46</sup> for assistance with reparations, call 888-6-VICTIM.

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<sup>38</sup> La. Rev. Stat. 46:1844(O).

<sup>39</sup> This change was also made via the recent statutory revision, *see* [Act 337](#).

<sup>40</sup> La. Rev. Stat. 46:1844(P).

<sup>41</sup> La. Rev. Stat. 46:1844(Q).

<sup>42</sup> La. Rev. Stat. 46:1844(R).

<sup>43</sup> La. Rev. Stat. 46:1844(S).

<sup>44</sup> La. Rev. Stat. 46:1844(T).

<sup>45</sup> La. Rev. Stat. 46:1844(U). *See also* discussion, *supra*, at §II (p.2).

<sup>46</sup> La. Rev. Stat. 46:1844(V).



- CONFIDENTIALITY: MINOR CRIME VICTIMS/VICTIMS OF SEX OFFENSES/VICTIMS OF HUMAN TRAFFICKING RELATED OFFENSES: LEAs, Sheriffs, DAs, Judicial officers, clerks of court, CVRB and DCFS shall NOT publicly disclose the name, address, or identify of crime victims who at the time of the commission of the offense are minors under 18 years of age or victims of sex offenses/human trafficking, regardless of the date of commission of the offense. This protection may be waived. Disclosure of juvenile crime victim is not prohibited when victim died as a result of the offense. Attorneys are prohibited from publicly disclosing, except during trial, the name, address, or identify of crime victim. May lawfully utilize initials, abbreviations. Motions disclosing personal info shall be filed with a request to keep it under seal. *Failure to comply shall be punishable as contempt of court.*<sup>47</sup>

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<sup>47</sup> La. Rev. Stat. 46:1844(W).

#### IV. MEDICAL TREATMENT FOR SEXUAL ASSAULT SURVIVORS & SEXUAL ASSAULT COLLECTION KITS

##### A. Medical Treatment for Sexual Assault Survivors: Forensic Medical Exams

All licensed hospitals and health care providers *shall* adhere to a set of procedures when presented with a victim of a sexually-oriented criminal offense.<sup>48</sup> The survivor shall decide whether or not to report to law enforcement; no hospital shall require the survivor to report in order to receive medical attention.<sup>49</sup> If the survivor chooses not to report to law enforcement, they shall be examined and treated as any other patient.<sup>50</sup> Tests and treatments specific to sexual assault victims shall be explained and offered, and the patient shall decide whether to proceed.<sup>51</sup>

A forensic medical examination (“FME”) is an examination by a health care provider to gather and preserve evidence of a sexual assault for use in a court of law. Includes: examination of physical trauma; patient interview; collection and evaluation of evidence, including: photos, preservation/maintenance of chain of custody, medical specimen collection, alcohol- and drug-facilitated sexual assault assessment and toxicology screening.<sup>52</sup> The “sexual assault collection kit” (“SAC Kit”) is defined as human biological specimen or specimens collected from the sexual assault survivor by a healthcare provider during a FME.<sup>53</sup>

Any exam or treatment shall include the preservation – in strict confidentiality – for a period of at least one year from the time victim presented for treatment, of tests or procedures and samples that may serve as potential evidence.<sup>54</sup> Any evidence collected shall be assigned a code number (instead of personally identifying information), and the hospital/health care provider shall maintain code records for a least one year from the date the victim presented.<sup>55</sup> The code number is to be used to identify victim, should they choose to report the assault to law enforcement.<sup>56</sup>

For cases in which the survivor chooses *not to report*, once the code number is assigned, custody of the evidence shall be transferred in a manner protective of evidentiary integrity to the appropriate criminal justice or law enforcement agency, who will then assume custodial responsibility for the evidence.<sup>57</sup> The LEA shall retrieve the evidence no later than seven days after receiving notification that code number was assigned.<sup>58</sup> The evidence shall bear only the code number.<sup>59</sup>

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<sup>48</sup> La. Rev. Stat. 40:1216.1(A).

<sup>49</sup> La. Rev. Stat. 40:1216.1(A)(1).

<sup>50</sup> La. Rev. Stat. 40:1216.1(A)(2)(a).

<sup>51</sup> *Id.*

<sup>52</sup> La. Rev. Stat. 15:622(A)(2).

<sup>53</sup> La. Rev. Stat. 15:622(A)(3).

<sup>54</sup> La. Rev. Stat. 40:1216.1(A)(2)(b).

<sup>55</sup> La. Rev. Stat. 40:1216.1(A)(2)(c).

<sup>56</sup> *Id.*

<sup>57</sup> La. Rev. Stat. 40:1216.1(A)(2)(d).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

If the survivor *does choose to report* to law enforcement, the health care provider shall contact the appropriate LEA.<sup>60</sup> Thereafter, the survivor shall be examined and treated as any other patient, with specimens kept for evidence to be turned over to LEA when they arrive to assume responsibility for investigation and *in no event* shall the evidence remain at the hospital more than 7 days after LEA receives notification from health care provider.<sup>61</sup>

If the survivor is sixteen years of age or younger, the hospital/health care provider shall immediately notify the appropriate law enforcement official, who then has 7 days from receipt of notification to retrieve the evidence collected.<sup>62</sup> The coroner, DA, LE officials, hospital personnel, and healthcare providers *may* develop procedures to make a videotape if the victim is 14 or younger with costs to be allocated among these parties.<sup>63</sup> If the survivor is physically or mentally incapable of making the decision to report, the hospital or healthcare provider shall immediately notify LE officials.<sup>64</sup>

No hospital or healthcare provider shall directly bill a victim for any services rendered in conducting a FME.<sup>65</sup> Expenses *shall* include: forensic services related to exam, including integral forensic supplies; scope procedures (e.g., anoscopy (anus) and colposcopy (cervix, vagina, an vulva); lab testing including drug screening, urinalysis, pregnancy screening, STD/HIV screening; and any medication provided during FME.<sup>66</sup>

A healthcare provider may submit claim for payment to the survivor's health insurance issuer *with the survivor's consent*.<sup>67</sup> The insurance company shall waive applicable deductible, co-insurance, and co-pay, and the healthcare provider shall submit claim to Crime Victims Reparations Fund ("CVRF") for satisfaction of non-covered services, not to exceed one thousand dollars (\$1000).<sup>68</sup> The HC provider may also submit claim to Medicaid, Medicare, or Tricare programs.<sup>69</sup> If the survivor does not consent to submission to the HC insurer or is otherwise uninsured, then the HC provider may submit a claim of payment to the CVRB, who shall reimburse at the rate promulgated by the Board for services rendered, but capped at one thousand dollars (\$1000).<sup>70</sup> The survivor may also seek reimbursement for the above-referenced services through the CVRB.<sup>71</sup>

The "department" shall make available to every hospital/HC provider a pamphlet containing an explanation of the billing process for services rendered pursuant to this section to be presented to every person presenting for treatment as a victim.<sup>72</sup> The aforementioned are minimum

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<sup>60</sup> La. Rev. Stat. 40:1216.1(A)(3).

<sup>61</sup> *Id.*

<sup>62</sup> La. Rev. Stat. 40:1216.1(A)(4)(a).

<sup>63</sup> La. Rev. Stat. 40:1216.1(A)(4)(b).

<sup>64</sup> La. Rev. Stat. 40:1216.1(A)(5).

<sup>65</sup> La. Rev. Stat. 40:1216.1(A)(6); *see also* La. Rev. Stat. 15:622.

<sup>66</sup> La. Rev. Stat. 40:1216.1(A)(6)(a)-(d).

<sup>67</sup> La. Rev. Stat. 40:1216.1(A)(7)(a).

<sup>68</sup> *Id.*

<sup>69</sup> La. Rev. Stat. 40:1216.1(A)(7)(b).

<sup>70</sup> La. Rev. Stat. 40:1216.1(A)(7)(c).

<sup>71</sup> *Id.*

<sup>72</sup> La. Rev. Stat. 40:1216.1(A)(9).

standards for operation and maintenance of hospitals; failure to comply shall constitute grounds for denial, suspension, or revocation of license.<sup>73</sup>

When hospital/HC provider fails to examine/treat a person presenting, the coroner or designee shall examine and make arrangements for treatment.<sup>74</sup> The coroner shall not refuse treatment based on lack of jurisdiction.<sup>75</sup>

The Louisiana Department of Health (“LDH”), through the medical directors of each of its nine regional health service districts, shall coordinate an annual sexual assault response plan for each district to be submitted secretary of LDH for approval.<sup>76</sup> Each annual response plan shall incorporate a sexual assault response team protocol to:

- Provide an inventory of all available resources and existing infrastructure and outline how they will be used effectively;<sup>77</sup>
- Identify the entity responsible for purchase of and standard procedure for storage of sexual assault collection kits prior to use;<sup>78</sup>
- Clearly outline standards and procedures for a survivor to receive a FME to ensure FME access in every parish, for handling and payment of medical bills related to FMEs, for transfer of sexual assault collection kits for both reported and unreported crimes to the appropriate law enforcement or criminal justice agency;<sup>79</sup>
- In the process of developing plan, solicit the input and approval of interested regional stakeholders (parish sheriff, police chiefs, hospitals, coroner, first responders, colleges and universities, school boards, sexual assault advocacy centers, district attorney, and crime lab).<sup>80</sup>

All sexual assault collection kits shall meet the standards developed by LDH and the Department of Public Safety and Corrections.<sup>81</sup>

## **B. Sexual Assault Collection Kits**

The coroner or his designee shall examine all alleged victims of a sexually-oriented criminal offense.<sup>82</sup> The coroner may select the hospital or healthcare provider named as the lead

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<sup>73</sup> La. Rev. Stat. 40:1216.1(B)(1) & (2).

<sup>74</sup> La. Rev. Stat. 40:1216.1(C).

<sup>75</sup> *Id.*

<sup>76</sup> La. Rev. Stat. 40:1216.1(E)(1).

<sup>77</sup> La. Rev. Stat. 40:1216.1(E)(2)(a).

<sup>78</sup> La. Rev. Stat. 40:1216.1(E)(2)(b).

<sup>79</sup> La. Rev. Stat. 40:1216.1(E)(2)(c)(d) & (e).

<sup>80</sup> La. Rev. Stat. 40:1216.1(E)(3).

<sup>81</sup> La. Rev. Stat. 40:1216.1(F).

<sup>82</sup> La. Rev. Stat. 13:5713(F).

entity for sexual assault examinations in the regional plan required by La. Rev. Stat. 40:1216.1 as his/her designee to perform the forensic medical examination.<sup>83</sup>

All criminal justice agencies charged with maintenance, storage, and preservation of SAC Kits shall conduct a *physical inventory* of them and shall compile, in writing, a report to the Louisiana State Police Crime Lab containing the number of untested kits in its possession and the date the kit was collected.

An “untested” SAC Kit means one that has not been submitted to the Louisiana State Police Crime Laboratory or a similarly qualified lab for either a serology (blood) or DNA test.<sup>84</sup> Each criminal justice agency shall also provide written notification if it does *not* have any untested kits in its possession.<sup>85</sup>

The Louisiana State Police Crime Lab shall prepare and transmit a report to the Senate and House judiciary committees containing number of untested SAC Kits being stored by each parish, by each criminal justice agency, and the date the untested kit was collected.<sup>86</sup> The report shall also include each agency that failed to submit a report.<sup>87</sup>

Within thirty (30) days of receiving a SAC Kit for a reported case involving an unknown suspect, the criminal justice agency shall submit the SAC Kit to a forensic laboratory for testing.<sup>88</sup> If a prosecuting agency makes an official request for analysis of SAC Kit, the criminal justice agency shall submit the SAC Kit to a forensic laboratory within thirty (30) days of receiving the request.<sup>89</sup>

Each criminal justice agency, including college/university campus policy departments, shall report the following information to the LCLE: the number and status of sexually oriented criminal offenses reported; data regarding SAC Kits, including number of kits submitted for analysis, number of kits requiring analysis, number of reported and unreported kits received, and the number of reported kits that were untested due to judicial or investigative reasons.<sup>90</sup>

Additionally, each agency shall also provide written notification if it *does not* have any sexually-oriented criminal offenses reported or any reported or unreported SAC Kits in its possession.<sup>91</sup> Each crime lab shall report to the LCLE the number of SAC Kits in their backlog for the prior calendar year.<sup>92</sup> The LCLE shall, in turn, transmit the aforementioned information, including the name and contact information for each criminal justice agency that failed to report, to the House and Senate judiciary committees.<sup>93</sup>

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<sup>83</sup> *Id.*

<sup>84</sup> La. Rev. Stat. 15:622(A)(5).

<sup>85</sup> La. Rev. Stat. 15:622(B).

<sup>86</sup> La. Rev. Stat. 15:622(C).

<sup>87</sup> *Id.*

<sup>88</sup> La. Rev. Stat. 15:623(A).

<sup>89</sup> La. Rev. Stat. 15:623(B).

<sup>90</sup> La. Rev. Stat. 15:624(A)(1)(a)-(g).

<sup>91</sup> La. Rev. Stat. 15:624 (A)(2)(a)-(c).

<sup>92</sup> La. Rev. Stat. 15:624(B).

<sup>93</sup> La. Rev. Stat. 15:624(C)(1) & (2).

## V. PROTECTIVE ORDERS

If a survivor of sexual assault chooses to report the crime to law enforcement and, after investigation, if charges are brought and an arrest has been made, then some protective measures are provided by way of standard criminal procedure (discussed below). However, as anyone who has worked directly with survivors of sexual assault can attest, the criminal process does not provide immediate relief and, in some instances, can be frustratingly slow and may present needless obstacles like race and/or gender bias, cronyism, protection of connected individuals, unmotivated investigators and/or prosecutors, and the like. Thus, coupled with the reality that many survivors simply opt not to report their assault to criminal authorities for a variety of understandable reasons, *civil* orders of protection are available to improve the likelihood that survivors can find safety from their assailants.

### A. Civil Orders of Protection

Civil orders of protection come in a few varieties, depending on the petitioner's eligibility status. Orders issued to prevent domestic abuse, dating violence, stalking or sexual assault are reported to and recorded in the Louisiana Protective Order Registry maintained by the Louisiana Supreme Court.

#### 1. Domestic Abuse Assistance Act

The Domestic Abuse Assistance Act ("DAAA") provides relief for those victimized by domestic violence and/or sexual assault. If the sexual assault is perpetrated by a person in one the following relationships with the survivor, then protection should properly be sought under the DAAA:

- (a) Family member: spouses, former spouses, parent/child, stepparent/stepchild, and grandparent/grandchild, foster parents/foster children;<sup>94</sup>
- (b) Household member: any person presently or formerly living in the same residence with the defendant and who is involved in a sexual or intimate relationship with the defendant;<sup>95</sup>
- (c) Dating partners: person who is involved or has been involved in a sexual or intimate relationship with the offender characterized by the expectation of affectionate involvement independent of financial considerations, regardless of whether the person presently lives or formerly lived in the same residence with the offender;<sup>96</sup>

#### 2. Protection from Sexual Assault Act

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<sup>94</sup> La. Rev. Stat. 46:2132(4).

<sup>95</sup> *Id.* Recent statutory revisions removed the "opposite sex" restriction in the definition of "household member." See [Act 79](#), effective August 1, 2017.

<sup>96</sup> La. Rev. Stat. 46:2151(B). Recent statutory revisions have changed the definition of "dating partner." See [Act 84](#), effective August 1, 2017.

This form of protection covers survivors who were sexually assaulted by a *stranger* or *acquaintance*, that is, someone with whom they are *not* in a domestic relationship.<sup>97</sup> Victims of sexual assault by a current or former intimate partner or family or household member can be filed under DAAA.

### **3. Other Civil Orders of Protection**

Protection from Stalking Act: can be filed by a person who If a person is being *stalked* by a stranger or acquaintance, they can seek relief under the Protection from Stalking Act.<sup>98</sup> The Louisiana Children’s Code offers protection for minors against family or household members and/or parents.<sup>99</sup> The Post Separation Family Violence Relief Act offers relief for an abused parent or a parent on behalf of an abused child.<sup>100</sup> An Injunction Against Abuse can be filed by spouses only and in conjunction with a divorce proceeding.<sup>101</sup> Finally, a generic Injunction can be filed by anyone seeking any kind of protection.<sup>102</sup>

### **4. Process of Obtaining Protection**

The survivor should present to the “Clerk of Court” office at the parish courthouse where they reside, the assailant resides, or where the assault took place. It should be noted that, although Clerk of Court personnel should know all facets of the procedure regarding protective orders, in the experience of this author, that is not always the case. Thus, a survivor should reach out to LaFASA, the their local accredited sexual assault crisis center, and/or local legal aid services provider to seek the assistance of an attorney.

The survivor should explain to the Clerk of Court personnel that they would like to obtain a protective order and advise exactly why. Again, if someone with whom they are in a domestic relationship sexually assaulted the survivor, then they should fill out the forms seeking relief under the DAAA. If a stranger or non-domestic acquaintance sexually assaulted the survivor, then ask for and fill out the forms providing relief under the Protection from Sexual Assault Act. The Clerk of Court personnel should provide someone to assist the survivor fill out the forms if they have any questions (assuming no assistance from an attorney). The petition for protection needs to be notarized, and the Clerk of Court oftentimes will provide that service, but the survivor should not exclusively rely on that.

The Petition should be reviewed upon submission, and if your allegations provide enough facts to necessitate temporary relief, then you will be issued a temporary restraining order (“TRO”). The TRO will be served upon the assailant by the parish sheriff’s office. It is a good idea for the survivor to have multiple copies of the TRO (in the car(s), at home, workplace, kids’ school, especially if they are protected by the order). If the assailant violates the Order, they should call the police immediately. When given the signed TRO, the survivor will also be given a court

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<sup>97</sup> See La. Rev. Stat. 46:2181, *et seq.*

<sup>98</sup> See La. Rev. Stat. 46:2171, *et seq.*

<sup>99</sup> See La. Ch. Code Art. 1564, *et seq.*

<sup>100</sup> See La. Rev. Stat. 9:361, *et seq.*

<sup>101</sup> La. Rev. Stat. 9:372.

<sup>102</sup> See La. Code Civ. Proc. Art. 3601, *et seq.*

date; the TRO usually expires on this date. On this date, the survivor will be given the opportunity at a hearing before a judge or hearing officer to obtain a “full order of protection.” During this hearing, the survivor can submit evidence and offer testimony, and the abuser will be given the opportunity to do the same. The survivor must show that abuse occurred by a preponderance of the evidence. Again, if a survivor can have an attorney present, they should do so (see LaFASA, STAR, SLS). If a full order of protection is denied, then the survivor can appeal the decision. If the initial petition for TRO is denied, then the Court shall issue a hearing date to afford the survivor the chance to provide testimony and evidence to obtain a protective order.

## **5. Costs**

If the survivor seeks protection from domestic violence, dating violence, stalking, or sexual violence, the *only* way a Court can assess a survivor with costs and/or fees is if your petition is deemed *frivolous*.<sup>103</sup> While “frivolous” is not defined in this particular context, it can be reasonably concluded that a frivolous petition is one that asserts claims that are dishonest in fact, made principally for an improper purpose (e.g., solely to harass the opposing party), and/or lacks merit under existing law and which cannot be supported by a good faith argument. There is currently no case law to interpret the meaning of “frivolous” in the protective order context.

Clerks of Court staff and even some judges commonly misunderstand this “costs” issue. Thus, it is critically important for survivors and those that advocate for and represent them to know the law and be prepared to present the proper argument.

### **B. Criminal Orders of Protection**

Once an abuser is charged and arrested, orders of protection fall into place as part of the standard criminal procedure. When a defendant is charged with a crime related to domestic abuse and/or sexual assault, AND the Court determines the defendant poses a threat or danger to the survivor, the Court is required to issue a criminal order of protection as a condition of bail. The survivor or prosecutor can request this. Once a defendant is convicted of a crime related to domestic abuse and/or sexual assault, AND the Court determines the defendant poses a threat or danger to the survivor, the Court is required to issue a criminal order of protection as a condition to a probation or sentencing order. In this case, the survivor, prosecutor, and/or the probation officer can request this.<sup>104</sup>

### **C. Firearms Prohibitions**

#### **1. Louisiana Law**

A defendant or respondent is prohibited from possessing a firearm when they are the subject of either a civil or criminal order of protection (for the duration of the order/injunction).<sup>105</sup>

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<sup>103</sup> La. Rev. Stat. 46:2136.1 & La. Code Civ. Proc. Art. 3603.1(C)(1).

<sup>104</sup> See La. C. Cr. P. Art. 26, Art. 320 (G) & (H), Art. 871, and Art. 895.

<sup>105</sup> See La. Rev. Stat. 46:2136.3



In the civil setting, the defendant or respondent is prohibited from possessing a firearm if the order contains a finding by the Court that the abuser presents a “credible threat” to the physical safety of a Family Member or Household Member (spouse or former spouse; parent/stepparent/grandparent/foster parent; children/stepchildren/grandchildren/foster children; current or former intimate co-habitants of the opposite sex (living together as spouses whether married or not)).<sup>106</sup>

In the criminal setting, the same “credible threat” (to the same eligible persons listed above) finding by the Court is necessary for the firearm prohibition to attach via a sentencing order or probation condition.<sup>107</sup> With respect to a criminal order of protection via bail restrictions or conditions of release, the order of protection must be against a defendant charged with a crime against a family member, household member, or dating partner, OR the defendant is charged with a crime of domestic abuse battery, stalking or sexual assault.<sup>108</sup>

A defendant is also prohibited from possessing a firearm when *convicted* of domestic abuse battery pursuant to: (a) La. Rev. Stat. 14:35.3 if placed on probation for a first or second offense and (b) La. Rev. Stat. 14:95.10 until the conviction is expunged or set aside, defendant is pardoned or has civil rights restored OR ten years from the date of completion of sentence, probation, parole, or suspension of sentence.

## 2. Federal Law

Federal law prohibits a person who is subject to a court *order of protection* or who has been convicted of a *misdemeanor crime of domestic violence* to possess, ship, or transport a firearm or ammunition.<sup>109</sup>

### D. Full Faith & Credit

A copy of any authentic foreign protective order may be annexed to and filed with an *ex parte* petition praying that the protective order be made executory in Louisiana.<sup>110</sup>

### E. LPOR Quick References

Rules regarding protective orders, firearms prohibitions, and differences between civil and criminal procedures and between federal and Louisiana rules can be confusing. The Louisiana Protective Order Registry is maintained by the Louisiana Supreme Court, who have drafted excellent Quick Reference Guides to help navigate these often complex issues, and **you can access the reference guides to Civil Orders of Protection [here](#), to Criminal Orders of Protection [here](#), and to firearm prohibitions [here](#).**

## VI. PRIVACY PROTECTIONS

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<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> La. C. Cr. P. Arts. 313 & 320.

<sup>109</sup> *See* 18 U.S.C. §921(a)(32) & 18 U.S.C. §922(a)(33).

<sup>110</sup> La. Rev. Stat. 13:4248.

## **A. Survivor/Advocate Privilege**

Survivors enjoy the same privileges as any other citizen with respect to communications between themselves and their attorney, mental health therapist, and/or health care provider. However, in Louisiana, a sexual assault survivor's communication with their advocate is also privileged.<sup>111</sup>

No person shall be required to disclose, by way of testimony or otherwise, a *privileged communication*, or to produce any records, documentary evidence, opinions, or decisions relating to such privileged communication, in connection with any civil or criminal proceeding.<sup>112</sup> A "privileged communication" in this context means: (a) a communication made to a representative or employee of a sexual assault center by a victim ("a person against whom an act of attempted or perpetrated sexual assault was committed) and (b) a communication not otherwise privileged made by a representative or employee of sexual assault center to a victim in the course of rendering advocacy services.<sup>113</sup> "Sexual assault center" means a program established and accredited in accordance with the standards set by the Louisiana Foundation Against Sexual Assault ("LaFASA").<sup>114</sup>

Records relating to a privileged communication maintained by a sexual assault center shall not be public records, but such records may be used for the compilation of statistical data if the identity of the victim and the contents of any privileged communications are not disclosed.<sup>115</sup>

## **B. Address Confidentiality Program**

The Address Confidentiality Program ("ACP") provides relocated victims of abuse, sexual assault, or stalking with a substitute address to use in place of their actual address when they apply for or receive state or local government services (e.g., driver's license, voter registration, public school records, etc.). The goal of the ACP is to prevent an assailant or potential assailant from finding the location of a victim through the state's public records. The ACP is not a witness protection program and does not assist participants in obtaining new names, social security numbers, or in relocating to a new residence. The ACP does not provide legal advice to the participant, but acts as the agent of a program participant for purposes of service of process and forwarding all first-class, certified or registered mail.

Once a victim of abuse, sexual assault or stalking moves to a new location in Louisiana that is unknown to their abuser where no public record of the new address has been created (e.g., telephone number, driver's license, utilities, etc.), the victim should call the ACP. The victim is then referred to an agency with a certified ACP application assistant to meet with and apply for participation in the program. When the application is complete, the application assistant sends the application to the Secretary of State's Office where it is reviewed to ensure requirements are met before certifying the victim as a program participant. The new participant is assigned an ACP

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<sup>111</sup> La. Rev. Stat. 46:2187.

<sup>112</sup> La. Rev. Stat. 46:2187(B).

<sup>113</sup> La. Rev. Stat. 46:2187(A)(1).

<sup>114</sup> La. Rev. Stat. 46:2187(A)(2).

<sup>115</sup> La. Rev. Stat. 46:2187(C).

code and an ACP authorization card is issued for each member of the household. The program participant, and co-participants if applicable, can now apply for state and local government services using the substitute address as his/her legal address. The ACP forwards all first-class, certified and registered mail to the program participant's actual mailing address. The program participant's actual residential address and telephone number are not public record.<sup>116</sup>

### **C. Confidentiality of Protected Individuals, Including Survivors of Sex Offenses**

All public officials, officers, and public agencies (including LEAs, DAs, judicial agencies, Clerks of Court, the Crime Victims Reparations Board, and the Department of Children and Family Services) shall not publicly disclose the name, address, or identity of crime victims under the age 18 (when the crime occurred), victims of sex offenses or human-trafficking related offenses (regardless the date of the commission of the offense).<sup>117</sup> This confidentiality may be waived.<sup>118</sup>

An attorney for any party shall be prohibited from publicly disclosing, except during trial, the name, address, or identity of these protected parties.<sup>119</sup> Attorneys may use initials, abbreviations, and other forms of indefinite descriptions on documents used in the performance of their duties to prevent public disclosure of confidential identities.<sup>120</sup> Failure to comply with these provisions may be punishable by contempt of court.<sup>121</sup>

### **D. Production of Certain Records**

If a criminal defendant is charged with certain enumerated sex offenses or human trafficking offenses, a subpoena or court order compelling the production of medical, psychological, school, or other records pertaining to the victim shall not be issued upon request of the defendant unless the subpoena or court order identifies the records sought with particularity and is reasonably limited as to subject matter, and the court finds, after contradictory hearing with the state, that the requested records are likely to be relevant and admissible at trial and are not sought for the purpose of harassing the victim.<sup>122</sup>

Records obtained without full compliance with these provisions shall be inadmissible.<sup>123</sup> The DA shall provide written notice of the contradictory hearing to the victim or their counsel.<sup>124</sup> The victim is entitled to have their own attorney represent them and present arguments at the contradictory hearing. Willful violation of these provisions may be punishable with contempt of court.<sup>125</sup>

## **VII. RESTITUTION & REPARATIONS**

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<sup>116</sup> Further information regarding the ACP program is available via the Louisiana Secretary of State office.

<sup>117</sup> La. Rev. Stat. 46:1844(W)(1)(a).

<sup>118</sup> *Id.*

<sup>119</sup> La. Rev. Stat. 46:1844(W)(1)(b).

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> La. Rev. Stat. 15:260(A), as recently revised by Act 337 (effective August 1, 2017).

<sup>123</sup> La. Rev. Stat. 15:260(B), as recently revised by Act 337 (effective August 1, 2017).

<sup>124</sup> La. Rev. Stat. 15:260(C), as recently revised by Act 337 (effective August 1, 2017).

<sup>125</sup> La. Rev. Stat. 15:260(D), as recently revised by Act 337 (effective August 1, 2017).

## A. Restitution

If the Court finds an actual pecuniary loss to a victim, or if the Court finds that the victim in connection with a criminal prosecution has incurred costs, the Court shall order the defendant to pay restitution to the victim as part of the sentence.<sup>126</sup> If the defendant agrees to a plea deal, the Court shall order restitution to “other victims” of the defendant’s criminal conduct even if those persons are not the victim of the criminal charge to which the defendant has pled.<sup>127</sup> Unless the victim consents to direct payments, restitution payments should be made to the victim through a Court designated intermediary.<sup>128</sup> The Court may order a periodic payment plant consistent with the defendant’s financial ability.<sup>129</sup> When probation is granted with a condition of paying restitution, the court must set the amount; it cannot be delegated to the probation department.<sup>130</sup> The court should determine the amount of restitution after a hearing allowing both sides to present evidence and offer argument as to the amount.<sup>131</sup> Restitution may be granted to compensate for mental distress even though no actual bodily injury or property loss is shown.<sup>132</sup>

## B. Crime Victims Reparations

A person, or their legal representative, who believes he/she is a victim of an enumerated crime<sup>133</sup> shall be eligible to make apply to the Crime Victims Reparations Board (“CVRB”) for a reparations award.<sup>134</sup> During the sentencing for a crime, the judge shall inform the victim of the potential eligibility for an award of reparations.<sup>135</sup> The judge shall also provide the contact information for the Crime Victims Reparations Board (“CVRB”) to such persons.<sup>136</sup>

The CVRB may make an award and order the payment of reparations for pecuniary loss (a loss that can be evaluated in money terms) related to personal injury, death, or catastrophic property loss resulting from any act or omission to act that is defined as a misdemeanor under any local ordinance or as a crime under state or federal law and involves the use of force or the threat of the use of force or any human trafficking-related offense.<sup>137</sup>

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<sup>126</sup> La. Code Cr. Proc. Art. 883.2.

<sup>127</sup> *Id.* See also La. Cr. Code Proc. Art. 895 and 895.1.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *State v. Hardy*, 432 So.2d 865 (La.1983); *State v. Arceneaux*, 570 So.2d 215 (La. App. 5th Cir.1990); *State v. Galloway*, 551 So.2d 701 (La. App. 1st Cir.1989); *State v. Abadie*, 636 So.2d 974 (La. App. 5th Cir.1994); *State v. Alexander*, 720 So.2d 82 (La. App. 5th Cir.1998).

<sup>131</sup> *State v. Spell*, 449 So.2d 524 (La. App. 1st Cir.1984).

<sup>132</sup> *State v. Alleman*, 439 So.2d 418 (La.1983); *State v. Bryan*, 535 So.2d 815 (La. App. 2d Cir.1988) (the trial court assessed restitution for non-pecuniary losses, i.e., inconvenience); *State v. Schmidt*, 558 So.2d 255 (La. App. 5th Cir.1990) (not unreasonable to order a defendant convicted of vehicular homicide to pay \$25,000 to the family of the victim, even though no specific evidence was presented on damages or losses); see also La. C. Cr. P. art. 895.1(B).

<sup>133</sup> See La. Rev. Stat. 46:1805.

<sup>134</sup> La. Rev. Stat. 46:1804(A).

<sup>135</sup> La. Rev. Stat. 46:1804(B).

<sup>136</sup> *Id.*

<sup>137</sup> La. Rev. Stat. 46:1805(A).

An application for reparations shall be filed in writing with the CVRB within one year after the date of the personal injury, death, or catastrophic property loss or within such longer period as the CVRB determines is justified by the circumstances.<sup>138</sup> The application shall be valid only if the act resulting in the personal injury, death, or catastrophic property loss was reported to the appropriate law enforcement officers within *seventy-two hours* after the date of the personal injury, death, or catastrophic property loss, or within such longer period as the board determines is justified by the circumstances.<sup>139</sup>

The same one-year deadline applies to applicants who are victims of a sexually-oriented crime; however, that *victim is not required to report* that offense to law enforcement in order to submit a valid application for reparations.<sup>140</sup> Such an applicant is required to submit: (a) certification from a healthcare provider or coroner that a FME was conducted and (b) an itemized billing statement for all related services rendered by the healthcare provider or coroner.<sup>141</sup>

The application must be made on the form provided by the CVRB and shall contain:

- Description of the act (date, nature, circumstances);
- Complete financial statement (cost of medical care, funeral, burial, lost wages/support, property loss; extent of indemnification from other sources);
- Statement of extent of disability resulting from injury, if any; and
- Authorization permitting the board to verify the contents of the application.<sup>142</sup>

Documents related to medical treatment, law enforcement investigative reports, and FME shall be kept confidential.<sup>143</sup> The CVRB is responsible for preparing and distributing informational materials and application forms to make residents aware of these reparation rights.<sup>144</sup>

A hearing may be necessary for the CVRB to reach a decision on an application, notice of which shall be mailed by certified mail at least ten (10) days prior to the day fixed for hearing.<sup>145</sup> The hearing shall be open to the public, unless the CVRB determines otherwise.<sup>146</sup> The applicant may be heard, introduce evidence, and/or cross examine witnesses, all on their own behalf or via counsel.<sup>147</sup>

The CVRB shall order payment of reparations if it finds, by a preponderance of the evidence, that a pecuniary loss was sustained by the victim or other claimant by reason or personal injury/death/catastrophic property loss and that such loss was proximately caused by the qualifying crime and that such loss has or will not be compensated from another source.<sup>148</sup> The CVRB may

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<sup>138</sup> La. Rev. Stat. 46:1806(A)(1).

<sup>139</sup> *Id.*

<sup>140</sup> La. Rev. Stat. 46:1806(B)(1) & (2).

<sup>141</sup> La. Rev. Stat. 46:1806(B)(3).

<sup>142</sup> La. Rev. Stat. 46:1806(C)

<sup>143</sup> La. Rev. Stat. 46:1806(D).

<sup>144</sup> La. Rev. Stat. 46:1807(A)(2).

<sup>145</sup> La. Rev. Stat. 46:1808(A).

<sup>146</sup> La. Rev. Stat. 46:1808(B).

<sup>147</sup> *Id.*

<sup>148</sup> La. Rev. Stat. 46:1809(A).

make a “partial eligibility determination” prior to any pecuniary loss occurring.<sup>149</sup> A reparations order may be made whether or not any person is arrested, prosecuted, or convicted of the crime.<sup>150</sup>

For victims of *non*-sexually oriented crimes, reparations will *not* be awarded if the CVRB finds that the crime was not reported within the seventy-two (72) hour window, if the claimant failed or refused to cooperate with the reasonable requests of law enforcement officials.<sup>151</sup> These ineligibility provisions *do not apply* to victims of sexually-oriented crimes.<sup>152</sup> Ineligibility provisions that *do apply* to victims of sexually-oriented crimes include: if reparations will substantially enrich the offender; if the claimant was the offender or an accessory (this provision does not apply to victims of human trafficking or trafficking of children for sexual purposes); if the claim was not timely filed; if the crime was committed prior to the June 23, 2015 (the effective date of the statute).<sup>153</sup>

Reparations awards shall not exceed ten thousand dollars (\$10,000) in the aggregate for all claims arising out of the same crime; for those who are permanently and/or totally disabled as a result of the crime, the aggregate award shall not exceed twenty-five thousand dollars (\$25,000).<sup>154</sup> A reparations award shall not affect the right of any person to sue the assailant to recover damages; however, an award of damages in a civil suit shall result in the claimant reimbursing the Crime Victims Reparations Fund (“CVR Fund”).<sup>155</sup>

The CVR Fund is comprised of several sources, including appropriations from the legislature, costs levied in criminal actions, proceeds from civil actions to recover damages for a crime forming the basis of a reparations award, and restitution payed by an offender to a victim<sup>156</sup>. However, monies deposited by the state treasurer from the collection of unclaimed prize money (lotto/slots/gaming) shall be used *exclusively* to pay expenses associated with health care services of victims of sexually-oriented criminal offenses, including FMEs.<sup>157</sup>

In its emergency room, every hospital shall prominently display posters giving notification of crime victims reparations program.<sup>158</sup> Additionally, every hospital or healthcare provider shall make available a pamphlet containing an explanation of the billing process for services.<sup>159</sup> Application forms provided by the CVRB shall be made available to individuals upon request at their parish’s sheriff’s office.<sup>160</sup>

## VIII. EVIDENTIARY PROTECTIONS

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<sup>149</sup> La. Rev. Stat. 46:1808(B)(1).

<sup>150</sup> *Id.*

<sup>151</sup> La. Rev. Stat. 46:1809(B)(3).

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> La. Rev. Stat. 46:1810(A).

<sup>155</sup> La. Rev. Stat. 46:1814(A).

<sup>156</sup> La. Rev. Stat. 46:1816(B).

<sup>157</sup> La. Rev. Stat. 46:1816(B)(8) & (C)(1) & (2).

<sup>158</sup> La. Rev. Stat. 46:1817(A)(1).

<sup>159</sup> La. Rev. Stat. 46:1817(A)(2).

<sup>160</sup> La. Rev. Stat. 46:1817(B).

When an accused is charged with a crime involving sexually assaultive behavior (including human trafficking), *reputation or opinion* evidence of the past sexual behavior of the victim is *not* admissible.<sup>161</sup>

Evidence of specific instances of the victim’s past sexual behavior is also not admissible *unless* it is (a) evidence of past sexual behavior with *persons other than the accused* to demonstrate whether or not the accused was the source of “semen or injury,” and this is limited to a period of seventy-two (72) hours prior to the time of the offense with an appropriate jury instruction and charge regarding this specific limitation, or (b) evidence of past sexual behavior with the accused offered by the accused upon the issue of whether or not the victim consented to the sexually abusive behavior. And, in the context of human trafficking, such evidence is allowed to prove a pattern of trafficking activity by the defendant.<sup>162</sup>

In order to offer this type of evidence, the accused must make a written motion *in camera* to offer such evidence.<sup>163</sup> The state shall make a reasonable effort to notify the victim prior to the hearing.<sup>164</sup> The Court shall have a closed hearing to determine admissibility.<sup>165</sup> The victim has the right to attend and be accompanied by their own counsel.<sup>166</sup> Any such motion along with statement of evidence, briefs, record of hearing, etc. shall be kept in a separate, sealed package as part of the record.<sup>167</sup>

When an accused is charged with the certain listed sexually-oriented crimes, the manner and style of the victim’s attire shall not be admissible as evidence that the victim encouraged or consented to the offense.<sup>168</sup>

These evidentiary rules *also apply to civil actions* wherein damage is alleged to arise from certain listed sex crimes, whether convicted of them or not.<sup>169</sup>

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<sup>161</sup> La. Code Evid. Art. 412(A)(1) and (B)(1).

<sup>162</sup> La. Code Evid. Art. 412(B)(2).

<sup>163</sup> La. Code Evid. Art. 412(C)(1).

<sup>164</sup> La. Code Evid. Art. 412(C)(2).

<sup>165</sup> La. Code Evid. Art. 412(E)(1).

<sup>166</sup> La. Code Evid. Art. 412(E)(2).

<sup>167</sup> La. Code Evid. Art. 412(E)(4).

<sup>168</sup> La. Code Evid. Art. 412.1(A).

<sup>169</sup> La. Code Evid. Arts. 412(G) & 412.1(B).

## **X. PREA<sup>170</sup>**

A vast number of sexual assault survivors are incarcerated. Operating with the understanding that being raped should never be part of an inmate's sentence, in 2003, the Prison Rape Elimination Act ("PREA") was passed with unanimous support from both parties in the United States Congress. The purpose of the act was to "provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations and funding to protect individuals from prison rape."<sup>171</sup> The PREA Standards were finalized and became effective in 2012.

There are four sets of PREA Standards that are specific to each kind of detention facility: (1) Adult Prisons and Jail [Standards](#), (2) Juvenile Facility [Standards](#), (3) Community Confinement [Standards](#), and (4) Lockup [Standards](#).

## **X. MISCELLANEOUS RIGHTS**

### **A. Parental Termination Rights**

When a child is conceived as the result of a sex offense, the victim of the sex offense who is the custodial parent may petition to terminate the rights of the perpetrator of the sex offense. Termination shall result in the loss of custody, visitation, contact, and other parental rights of the perpetrator regarding the child. Commission or conviction of a sex offense by the natural parent that resulted in conception of the child is grounds for termination of parental rights. A petitioner herein shall not be required to prepay not be cast with court costs or costs of service or subpoena for the filing of petition pursuant to sex offense related grounds; all costs to be paid by the perpetrator.<sup>172</sup>

### **B. Visitation**

A parent who committed felony rape shall be denied visitation rights and contact with the child conceived through commission of said felony rape.<sup>173</sup>

### **B. Prescription**

Delictual actions (tort lawsuits) that arise due to damages sustained as a result of an act defined as a crime of violence are subject to a two-year prescription period (what Louisiana calls

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<sup>170</sup> LaFASA's Rachel Calvaruso is the coalition's PREA Liaison working closely with member centers and Louisiana correctional facilities to help realize PREA's mission. More information and resources can be found at the [National PREA Resource Center](#) as well as [Just Detention International](#).

<sup>171</sup> Prison Rape Elimination Act, 2003.

<sup>172</sup> La. Ch. Code Art. 1004(I).

<sup>173</sup> La. Civ. Code Art. 137.



“statute of limitations”). This prescription commences to run from the day injury or damage is sustained.<sup>174</sup>

A lawsuit against a person for any act of sexual assault is subject to three-year prescription period. Here, prescription commences to run from the day the injury or damage is sustained *or* the day the victim is notified of the identity of the offender by law enforcement or a judicial agency, whichever is later.<sup>175</sup>

## **XI. CONCLUSION<sup>176</sup>**

The aforementioned legal rights and protections help ensure that survival becomes a reality for victims of sexual violence. If used properly, these rights and protections can return control and self-worth to survivors. These rights are designed to create an atmosphere of fairness, dignity, and respect for survivors. Not surprisingly, that mark is missed quite often. Part of the goal of LaFASA, its member centers, and this article is to increase awareness of these rights and protections so that they are properly recognized and enforced.

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<sup>174</sup> La. Code Civ. Proc. Art. 3493.10.

<sup>175</sup> La. Code Civ. Proc. Art. 3496.2.

<sup>176</sup> This article provides attorneys, advocates, allied professionals, and survivors with a general resource and/or starting point for researching or referencing common victims’ rights issues, particularly those related to sexual assault survivors. Depending on the facts of a specific case, there may be additional laws that affect a victim’s rights. This article is intended as a summary of relevant laws and is current through 2017. LaFASA does not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a victims’ rights issue, we recommend that you contact a local attorney. Any questions and/or requests for technical assistance may be directed to Sean Cassidy, attorney/legal advocate with LaFASA, (225) 372-7587, [sean@lafasa.org](mailto:sean@lafasa.org), 2133 Silverside Drive, Suite A, Baton Rouge, Louisiana 70808.