

2017 Regular Session

SENATE BILL NO. 54

BY SENATOR MIZELL (On Recommendation of the Louisiana State Law Institute)

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

CHILDREN. Provides for the unlawful exploitation of children. (8/1/17)

1 AN ACT

2 To amend and reenact Children's Code Articles 116(25), 606(A)(6), the introductory

3 paragraph of Children's Code Article 622(B), Chapter 20 of Title VI to be comprised

4 of Articles 725 through 725.8, and 804(3), and to enact Children's Code Article

5 622(B)(5) and to repeal Children's Code Articles 728(4), 804(9), 839(D), 918(D),

6 and 923 and Section 10 of Act 564 of the 2014 Regular Session of the Legislature,

7 relative to human trafficking of children; to provide findings and purpose; to provide

8 for definitions; to provide for capacity; to provide for duties of law enforcement; to

9 provide for duties of the Department of Children and Family Services; to provide for

10 confidentiality; to provide for expungement; to provide for procedures; and to

11 provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. Children's Code Articles 116(25), 606(A)(6), the introductory paragraph

14 of Children's Code Article 622(B), Chapter 20 of Title VI comprised of Articles 725 through

15 725.8, and 804(3) are hereby amended and reenacted and Children's Code Article 622(B)(5)

16 is hereby enacted to read as follows:

17 Art. 116. Definitions

* * *

CHAPTER 20. ~~SAFE HARBOR FOR SEXUALLY EXPLOITED~~EXPLOITATION OF CHILDREN

Art. 725. Findings and purpose

The legislature finds that arresting, prosecuting, and incarcerating ~~victimized~~ children **victimized by commercial sexual activity or labor trafficking** serves to re-traumatize them ~~and to increase their feelings of low self-esteem, which only~~ **makes making** the process of recovery more difficult. Both federal and international law recognize that ~~sexually~~ exploited children are the victims of crime and should be treated as such. Therefore, ~~sexually~~ exploited children ~~should~~ **shall** not be prosecuted for criminal acts related to ~~prostitution~~ **their exploitation, except those crimes listed in Article 305(A)**. Instead, ~~sexually~~ exploited children ~~should, where possible,~~ **shall** be diverted into services that address ~~the~~ **their** needs ~~of these children outside of the justice system. Sexually exploited~~ **Exploited** children deserve the protection of child welfare services, including diversion, crisis intervention, counseling, and emergency housing services. The purpose of this Chapter is to protect a child from further victimization after the child is discovered to be a ~~sexually~~ **an** exploited child by ensuring that a child protective response is in place in the state. This is to be accomplished by **conclusively** presuming that any child engaged in prostitution, prostitution by massage, or **any** crime against nature ~~by solicitation is a victim of sex trafficking and providing these children with the~~ **is exploited and that any child victim of labor trafficking is exploited. These children shall be provided** appropriate care and services ~~where possible~~. In determining the need for and capacity of services that may be provided, the Department of Children and Family Services shall recognize that ~~sexually~~ exploited children have separate and distinct service needs according to gender, and every effort should be made to ensure these children are not ~~prosecuted or treated as juvenile delinquents~~ **adjudicated delinquent**, but instead are given the appropriate social services.

1 Comments – 2017

2 The 2017 revision expands the law to protect victims of labor trafficking and
3 clarifies that the presumption of trafficking is conclusive. This reflects the
4 underlying public policy that a child victim of sexual or labor exploitation cannot
5 consent to his victimization.

6 Art. 725.1. Definitions

7 As used in this Chapter, the following terms and phrases shall have the
8 following meaning, unless the context requires otherwise:

9 (1) **"Commercial sexual activity" means any sexual act performed or**
10 **conducted when anything of value has been given, promised, or received by any**
11 **person.**

12 (2) ~~"Safe house" means a residential facility operated by an authorized~~
13 ~~agency, including a nonprofit agency, with experience in providing services to~~
14 ~~sexually exploited children and approved by the department to provide shelter for~~
15 ~~sexually exploited children.~~ **"Debt bondage" means inducing an individual to**
16 **provide any of the following:**

17 (a) **Commercial sexual activity in payment toward or satisfaction of a**
18 **real or purported debt.**

19 (b) **Labor or services in payment toward or satisfaction of a real or**
20 **purported debt if either of the following occurs:**

21 (i) **The reasonable value of the labor or services provided is not applied**
22 **toward the liquidation of the debt.**

23 (ii) **The length of the labor or services is not defined and the nature of the**
24 **labor or services is not defined.**

25 (3) ~~"Sexually exploited child" means any person under the age of eighteen~~
26 ~~who has been subject to sexual exploitation because the person either:~~

27 (a) ~~Is a victim of trafficking of children for sexual purposes under~~
28 ~~R.S. 14:46.3.~~

29 (b) ~~Is a victim of child sex trafficking under 18 U.S.C. 1591.~~

1 "Department" means the Department of Public Safety and Corrections, office
2 of juvenile justice Children and Family Services.

3 (4) "Exploited child" means a child who is victimized by commercial
4 sexual activity or labor trafficking.

5 (5) "Labor trafficking" means labor or services obtained through the use
6 of fraud, force, or coercion including involuntary servitude, peonage, debt
7 bondage, or slavery.

8 Comments - 2017

9 (a) The definitions of "commercial sexual activity" and "debt bondage" are
10 taken from R.S. 14:46.2(C). "Exploited" is a new term that encompasses both types
11 of victimization. "Labor trafficking" is also a new term taken from the federal
12 Trafficking Victims Protection Act, 22 U.S.C. 7101 et seq.

13 (b) The law prior to the 2017 revision vested responsibility for sexually
14 exploited children in the Department of Public Safety and Corrections, office of
15 juvenile justice. Because this revision treats a victim of trafficking as a child in need
16 of care, the Department of Children and Family Services is the lead agency.

17 Art. 725.2. ~~Safe house for sexually exploited children~~ Capacity to consent

18 A. ~~The department may, to the extent funds are available, operate or contract~~
19 ~~with an appropriate nongovernmental agency with experience working with sexually~~
20 ~~exploited children to operate one or more safe houses in a geographically appropriate~~
21 ~~area of the state. Each safe house shall provide safe and secure housing and~~
22 ~~specialized services for sexually exploited children. Nothing in this Article shall be~~
23 ~~construed to preclude an agency from applying for and accepting grants, gifts, and~~
24 ~~bequests for funds from private individuals, foundations, and the federal government~~
25 ~~for the purpose of creating or carrying out the duties of a safe house for sexually~~
26 ~~exploited children.~~ A child lacks the capacity to consent to commercial sexual
27 activity. Any child who is taken into custody for prostitution, prostitution by
28 massage, or any crime against nature as well as a child who is a victim of
29 trafficking for sexual purposes is conclusively presumed to be exploited, and

1 shall not be prosecuted, convicted, or adjudicated for any criminal or
2 delinquency offenses related to commercial sexual activity.

3 B. Each safe house operating under a contract with the department to provide
4 services to sexually exploited children pursuant to the provisions of this Article shall
5 submit to the department an annual report on their operations including information
6 on the services offered, geographic areas served, number of children served, and
7 individual status updates on each child served. This information shall not include the
8 name, address, or other identifying information of the child served. The department
9 shall compile the data from all the reports submitted by each safe house pursuant to
10 the provisions of this Article and shall provide this information in an annual report
11 to the legislature on or before the first day of February each year. A child lacks the
12 capacity to consent to any act of labor trafficking. A child engaged in any act
13 of labor trafficking, including involuntary servitude, peonage, or slavery, is
14 conclusively presumed to be a victim of labor trafficking, and shall not be
15 prosecuted, convicted, or adjudicated for any criminal or delinquency offenses
16 related to labor trafficking.

17 Comments - 2017

18 (a) Paragraph A of this Article restates a portion of the substance of former
19 Article 725. It resolves an ambiguity in R.S. 14:46.3(E) regarding whether all
20 children taken into custody for prostitution, prostitution by massage, or any crime
21 against nature, as opposed to only those children who are proved to be victims of
22 trafficking, are immune from prosecution for criminal or delinquency offenses
23 related to commercial sexual activity. Under the revision, all children taken into
24 custody for those offenses are conclusively presumed to be exploited and may not
25 be prosecuted for offenses related to commercial sexual activity.

26 (b) Paragraph B of this Article is new. Children as well as their parents or
27 caretakers can become victims of abusive labor practices, or parents can subject their
28 children to such abuse. This change is consistent with federal law that recognizes
29 that labor trafficking bondage, servitude, peonage, and slavery are perhaps as

1 common as sexual abuse.

2 (c) Twenty states, as of 2016, grant immunity to all children under the age
3 of eighteen. See National Conference of State Legislatures, Human Trafficking State
4 Laws. The 2017 revision ensures that all children under the age of eighteen who
5 engage in commercial sexual activity, labor trafficking, and any criminal or
6 delinquency offenses related to those acts are treated as victims rather than
7 delinquents. This policy, along with the federal Trafficking Victims Protection Act,
8 22 U.S.C. 7101 et seq., recognizes that these children were lured or coerced into
9 these activities by persons who took advantage of their immaturity and special
10 vulnerability. The Uniform Act on Prevention of and Remedies for Human
11 Trafficking (2013) further acknowledges that "...[i]mmunity is provided because
12 minor victims of human trafficking should not be viewed as legally capable of
13 consenting to their own exploitation. Immunity in such cases recognizes the facts
14 that: (a) the real culpability for the offenses of the minor resides with the coercing
15 or exploiting party; and (b) the minor is a child in need of counseling, treatment, and
16 support rather than prosecution."

17 Art. 725.3. ~~Statewide protocol~~ **Applicability of children in need of care procedure**

18 ~~The department shall develop a statewide protocol for helping to coordinate~~
19 ~~the delivery of services to sexually exploited children and shall work with court~~
20 ~~intake officers to ensure that all state, federal, and community-based resources for~~
21 ~~sexually exploited children are known and available to children who have been~~
22 ~~granted diversion under Article 839. **An exploited child is a child in need of care,**~~
23 ~~**and unless otherwise specified in this Chapter, the provisions of Title VI of this**~~
24 ~~**Code shall govern.**~~

25 Comments - 2017

26 In addition to abused and neglected children, the child-in-need-of-care
27 jurisdictional category already expressly includes "The child [who] is a victim of
28 human trafficking or trafficking of children for sexual purposes." *See* Art. 606(A)(6).
29 The 2017 revision specifically adds exploited children within the greater framework

1 of child in need of care proceedings.

2 **Art. 725.4. Duties of law enforcement**

3 **A. After the initial encounter with a child reasonably believed to be**
 4 **exploited, a peace officer or a probation officer of the court shall take the child**
 5 **into custody without a court order pursuant to Article 621.**

6 **B. The officer shall notify the Crime Victims Services Bureau of the**
 7 **Department of Public Safety and Corrections that the child may be eligible for**
 8 **special services and, as a mandatory reporter, shall notify the Department of**
 9 **Children and Family Services that the child is in need of protective services.**

10 **C. The officer shall file a complaint alleging that the child is in need of**
 11 **care in the appropriate juvenile court.**

12 Comments - 2017

13 (a) Often the first official to come into contact with an exploited child is a
 14 peace officer, but whoever is the official, that professional must be the one to
 15 activate the protective services that are available at the state or community level.
 16 Although Article 725.3 provides that all provisions of the Child in Need of Care Title
 17 are generally applicable, Paragraph A of this Article specifically provides that an
 18 officer's apprehension of a child reasonably believed to be exploited is authorized
 19 without a warrant in accordance with Article 621.

20 (b) Paragraph B of this Article notes that the officers are mandatory reporters
 21 of facts reasonably indicating exploitation. See Arts. 603(17)(e) and 610(A). R.S.
 22 46:2162 also provides for assistance to victims of human trafficking and requires
 23 notification to the Crime Victims Services Bureau. See Art. 622, which imposes
 24 limitations on the places where an exploited child can be housed.

25 (c) Paragraph C of this Article ensures continuing juvenile court oversight of
 26 the victim.

27 **Art. 725.5. Protective custody**

28 **A. Based upon an affidavit executed by a peace officer or other credible**
 29 **person that to the best of his knowledge and belief, the exploited child appears**

1 to be mentally ill or suffering from substance abuse and is in need of immediate
 2 treatment, the court may, in accordance with Article 1432, order that the child
 3 be taken to a community mental health center, a public or private general
 4 hospital, or a detoxification center.

5 B. No victim may be ordered into protective custody without a court
 6 order based on allegations specified in Article 1432. The duration of the order
 7 is governed by Article 1432.

8 Comments – 2017

9 (a) This Article does not substantially change the law. Nevertheless, there are
 10 three modifications: (1) This Article requires a physician's certificate in all cases,
 11 because even a tentative diagnosis required to justify a time-limited denial of liberty
 12 ought to be made by a physician, and not all coroners are physicians; (2) given the
 13 easy availability of oral instanter orders, it prohibits protective custody without a
 14 court order; and (3) it omits the coroner's office as an appropriate treatment facility.

15 (b) The calculation of the time periods is governed by Article 114. If the
 16 period is less than seven days, weekend days and legal holidays are excluded from
 17 the computation. If the period is seven days or more, weekend days and legal
 18 holidays are included in the calculation.

19 (c) An alternative method of hospitalization is provided in Chapter 9 of Title
 20 XIV of this Code. See Arts. 1434-1459, Judicial Commitment Procedure.

21 Art. 725.6. Duties of the Department of Children and Family Services

22 A. Working with law enforcement, the department shall fully cooperate
 23 in investigating allegations of child exploitation.

24 B. The department shall be the lead agency in assessing the child's needs
 25 and in developing and coordinating a plan for the delivery of specialized
 26 services. It shall use a collaborative, multi-disciplinary approach, working with
 27 all other federal, state, and community agencies, both public and private, and
 28 with law enforcement to identify the services that each can provide to the child.

29 C. The department shall work with all court intake officers to ensure

1 that all state, federal, and community-based resources for exploited children are
2 known and available to the child.

3 D. The department shall give priority to the determination of an
4 exploited child's eligibility for federal match funds available through Part E of
5 Subchapter IV of Chapter 7 of Title 42 of the United States Code.

6 E. The department shall cooperate with the prosecution of any
7 perpetrator of child exploitation.

8 F. The department shall develop policies that reflect best practices. It
9 shall follow all protocols developed by the Louisiana Human Trafficking
10 Commission and be responsible for compiling data requested by the
11 commission. In addition, the department shall provide the commission with a
12 statewide protocol for coordinating the delivery of services and the use of all
13 available resources.

14 Comments – 2017

15 (a) The national consensus is that child victims of trafficking should be
16 categorized as abused or neglected children, Child In Need of Care, rather than
17 Families In Need of Services, delinquents, or criminals. C.A. Butler, *Kids for Sale:*
18 *Does American Recognize Its Own Sexually Exploited Minors As Victims of Human*
19 *Trafficking?*, 44 Seton Hall L. Rev. 833 (2014). See Ch.C. Art. 725.3.

20 (b) Since the very first Louisiana Juvenile Court Act, the lead agency in every
21 "dependency", "abuse and neglect", or since 1991, "children in need of care" case has
22 been the Department of Children and Family Services or its predecessor.

23 (c) The source for Paragraph C of this Article is former Article 725.3.

24 **Art. 725.7. Victim confidentiality**

25 **In addition to the protections of Article 412, law enforcement officers,**
26 **investigators, prosecutors, and service providers shall keep confidential all**
27 **reports and records of exploitation, including the existence of such records. The**
28 **identity, pictures, and images of the child victim and his family shall be**
29 **confidential except to the extent that disclosure is:**

1 **(1) Essential for the purposes of investigation or prosecution.**

2 **(2) Required by court order.**

3 **(3) Necessary to ensure services or benefits.**

4 Comments - 2017

5 The source of this Article is Section 13 of the Uniform Act on Prevention of
6 and Remedies for Human Trafficking (2013). As its commentary notes: "Law
7 enforcement officials are to keep the identity and pictures of victims and their
8 families confidential both to protect them from traffickers and to lessen the impact
9 of the adverse publicity."

10 **Art. 725.8. Motion to set aside adjudications, convictions; expungement and**
11 **sealing of records**

12 **A. A person adjudicated for prostitution, labor trafficking, or any other**
13 **offense related to his exploitation, except those crimes listed in Article 305(A),**
14 **may file a motion with the appropriate court to set aside the adjudication and**
15 **to expunge and seal the record of the judgment.**

16 **B. The motion shall be in writing and shall describe the supporting**
17 **evidence with particularity. The motion may include copies of any documents**
18 **showing that the person is entitled to relief under this Article.**

19 **C. The motion shall be served on the district attorney.**

20 **D. The court shall grant the motion if the court finds by a preponderance**
21 **of the evidence that the violation was a result of the person's having been a**
22 **victim of exploitation. Documentation provided by a federal, state, or local**
23 **government agency of a person's status as a victim of exploitation shall create**
24 **a presumption that the violation was a result of the person's having been a**
25 **victim of exploitation. However, such documentation shall not be required to**
26 **grant the motion.**

27 **E. If the motion is granted, the court shall order the expungement and**
28 **sealing of the record and report of the juvenile proceedings including all records**
29 **and files related to the person's arrest, citation, investigation, charge,**

1 delinquency proceedings, adjudication, and disposition for the offense. The
2 order of expungement and sealing shall have the same effect as that provided
3 in Article 922.

4 Comments - 2017

5 This Article is a revision of prior Articles 918(D) and 923. In accordance
6 with Article 725.2, a child victim of exploitation cannot be adjudicated of any
7 offense related to his trafficking. For adult motions, see C.Cr.P. Art. 855.1.

8 * * *

9 Art. 804. Definitions

10 As used in this Title:

11 * * *

12 (3) "Delinquent act" means an act committed by a child of ten years of age
13 or older which if committed by an adult is designated an offense under the statutes
14 or ordinances of this state, or of another state if the offense occurred there, or under
15 federal law, except traffic violations. It includes an act constituting an offense under
16 R.S. 14:95.8, an act constituting an offense under R.S. 14:81.1.1(A)(2), and a direct
17 contempt of court committed by a child. "Delinquent act" shall not include a
18 violation of R.S. 14:82, 83.3, 83.4, 89, or 89.2 ~~for a child who, during the time of the~~
19 ~~alleged commission of the offense, was a victim of trafficking of children for sexual~~
20 ~~purposes pursuant to R.S. 14:46.3(E).~~

21 Section 2. Children's Code Articles 728(4), 804(9), 839(D), 918(D), and 923 and
22 Section 10 of Act 564 of the 2014 Regular Session of the Legislature are hereby repealed in
23 their entirety.

24 Section 3. If the provisions of this Act become effective, they shall prevail over any
25 conflicting provisions in the Act that originated as House Bill No. [LSLI Expungement Bill]
26 of this 2017 Regular Session.

for the expungement of records when a person was adjudicated for an offense related to exploitation.

Present law (Ch.C. Arts.728 and 804(9)) defines "sexually exploited child".

Proposed law removes present law and more broadly defines "exploited child" in Ch.C. Art.725.1.

Present law (Ch.C. Art. 804(3)) defines "delinquent act" to exclude certain violations of the Criminal Code for a victim of trafficking.

Proposed law clarifies present law to apply to violations which are related to the exploitation of the child.

Present law (Ch.C. Art. 839(D)) authorizes district attorneys to enter into an informal adjustment agreement with specialized services for a child's first offense related to certain acts of prostitution.

Proposed law deletes present law.

Present law (Ch.C. Arts. 918(D) and 923) provides for the expungement of adjudications involving human trafficking victims.

Proposed law moves and clarifies present law in Ch.C. Art. 725.8.

Present law (Section 10 of Act 564 of the 2014 Regular Session) provides that certain services will not become available to a child victim of commercial sexual exploitation, human trafficking, or trafficking of children for sexual purposes until the child becomes eligible for federal match funds.

Proposed law deletes present law.

Effective on August 1, 2017.

(Amends Ch.C. Arts. 116(25), 606(A)(6), 622(B)(intro para), 725 through 725.8, 804(3); adds Ch.C. Art. 622(B)(5); repeals Ch.C. Arts. 728(4), 804(9), 839(D), 918(D), and 923)