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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement Jr.

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SB 434 Engrossed

DIGEST  
2020 Regular Session

Mizell

Present law provides definitions and penalties for the crimes of human trafficking and trafficking of children for sexual purposes.

Proposed law retains present law.

Present law provides that a victim of the crime of trafficking of children for sexual purposes cannot be prosecuted for crimes committed as a direct result of being trafficked. Present law further provides that any child determined to be a victim of the crime of trafficking of children for sexual purposes is eligible for specialized services for sexually exploited children.

Proposed law retains present law.

Present law provides that a victim of the crime of human trafficking involving services that include commercial sexual activity or any sexual contact that constitutes a crime pursuant to present law has an affirmative defense to prosecution for certain present law sex offenses, including prostitution and crime against nature.

Proposed law deletes present law and provides that a victim of the crime of human trafficking cannot be prosecuted for crimes committed as a direct result of being trafficked, and further provides that any child determined to be a victim of the crime of human trafficking is eligible for specialized services for sexually exploited children.

Proposed law provides that, notwithstanding any other provision of present law, a victim of trafficking as provided by present law cannot be prosecuted for any crime committed as a direct result of being trafficked. Proposed law further provides that any child determined to be a victim of trafficking pursuant to the provisions of proposed law is eligible for specialized services for sexually exploited children. Proposed law further provides that present law provisions regarding the multidisciplinary team approach applicable to children who have been abused or neglected, to the extent practical, apply to the children who are victims of trafficking.

Proposed law provides that a motion to set aside a conviction may be filed and served upon the district attorney at any time following a conviction involving the present law crimes of prostitution, prostitution by massage, crime against nature, or crime against nature by solicitation, when the defendant's participation in the crime was a result of having been a victim of human trafficking or trafficking of children for sexual purposes under present law, or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act. Proposed law further provides that the motion must be in writing, describe the supporting evidence with particularity, and include copies

of any documents showing that the defendant is entitled to relief under proposed law. Proposed law further provides that the motion cannot be denied without a contradictory hearing, unless it appears on the face of the motion that the defendant is not entitled to the relief sought as a matter of law.

Proposed law provides that the court must grant the motion to set aside if the court finds by a preponderance of evidence that the crime was committed as a result of the defendant having been a victim of human trafficking. Proposed law further provides that documentation of the defendant's status as a victim of human trafficking provided by a federal, state, or local government agency creates a presumption that the defendant's conviction was obtained as a result of having been a victim of human trafficking, but such documentation is not required in order to grant the motion to set aside. Proposed law further provides that if the motion is granted, the court is to order the expungement and sealing, without cost to the defendant, of the record of arrest and conviction, including all records and files related to the defendant's arrest, citation, investigation, charge, conviction, probation, and sentence.

Present law provides forms for the motion to set aside conviction and dismiss prosecution provided for by present law.

Proposed law retains present law and adds provisions to the forms relative to the proposed law motion to set aside conviction of certain offenses related to human trafficking.

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

(Amends C.Cr.P. Art. 987 and R.S. 14:46.2(F); adds C.Cr.P. Art. 926.2 and R.S. 14:46.5)