
DIGEST

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DIGEST

Broome (SB 88)

Present law provides for the disposition and allocation of forfeited property related to certain sex crimes, and provides exemptions. Proposed law retains present law and also provides that where the property to be forfeited is related to human trafficking (R.S. 14:46.2) or trafficking of children for sexual purposes (R.S. 14:46.3), the proceeds of the public sale or auction shall be applied first to any restitution granted to the victim, after the costs of the public sale or auction, court costs, and fees related to seizure and storage have been satisfied. Any remaining proceeds shall be distributed in the following manner:

- (1) 25% to the seizing agency or agencies allocated among the seizing agencies in proportion to their participation in the management of the investigation, seizure, and forfeiture.
- (2) 25% to the prosecuting agency.
- (3) 50% to the Exploited Children's Special Fund.

Proposed law creates the Exploited Children's Special Fund. Appropriations by the legislature and all monetary assessments paid and interest accrued on funds collected as provided in proposed law shall be deposited into the fund. Subject to appropriation by the legislature, monies in the fund shall be used for providing services and treatment administered by the Department of Children and Family Services (DCFS), such as securing residential housing, health services, and social services, to sexually exploited children. The department may also use the funds for grants or to provide services for sexually exploited children.

Proposed law requires that any person who is convicted or pleads guilty or nolo contendere to an offense involving trafficking of children for sexual purposes (R.S. 14:46.3), prostitution with persons under seventeen (R.S. 14:82.1), or enticing persons into prostitution (R.S. 14:86) be ordered to pay a mandatory monetary assessment of \$2,000. The assessment shall be in addition to and not in lieu of, and shall not be used to offset or reduce, any fine authorized or required by law. If the court finds that the offender is indigent and therefore unable to pay the mandatory assessment at the time of conviction, the court shall order a periodic payment plan consistent with the person's financial ability.

Proposed law requires that a person convicted of a violation of human trafficking (R.S. 14:46.2) or trafficking of children for sexual purposes (R.S. 14:46.3) be ordered to pay mandatory restitution to the victim, with the proceeds from property forfeited under proposed law (R.S. 15:539.1) applied first to payment of restitution, after the costs of the public sale or public auction, court costs, and fees related to seizure and storage have been satisfied. Restitution shall include costs of medical and psychological treatment, transportation, and housing.

Proposed law provides that with respect to children found to be victims of human trafficking, the DCFS, in conjunction with the Dept. of Health and Hospitals, shall develop a plan for the delivery of services to victims of human trafficking.

Proposed law provides that in developing the plan, the departments shall work together with such other state and federal agencies, public and private entities, and other stakeholders as they deem appropriate.

Proposed law provides that as soon as practicable after the initial encounter with a person who reasonably appears to a law enforcement agency, a district attorney's office, or the office of the attorney general to be a victim of human trafficking, such agency or office must:

- (1) Notify the Crime Victims Services Bureau of the Dept. of Public Safety and Corrections that such person may be eligible for services under proposed law.
- (2) Make a preliminary assessment of whether such victim or possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in the federal Trafficking Victims Protection Act or appears to be otherwise eligible for any federal, state, or local benefits and services. If it is determined that the victim or possible victim appears to meet such criteria, then the agency or office is to report the finding to the victim and refer the child victim to appropriate services available, including legal services providers. If the victim or possible victim is under the age of 18 or an adult in need of protective services, the agency or office shall also notify the DCFS.

Proposed law provides that after the agency or office makes a preliminary assessment that a victim or possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in the federal Trafficking Victims Protection Act, and upon the request of such victim, the agency or office is to provide the victim or possible victim of human trafficking with a completed and executed United States Citizenship and Immigration Services form.

Proposed law provides that an individual who is a victim of human trafficking has a civil cause of action in district court for injunctive relief and to recover actual damages, compensatory damages, punitive damages, and for any other appropriate relief. Proposed law further provides that a prevailing plaintiff is to be awarded court costs and attorney fees, and is entitled to treble damages on proof of actual damages where the defendant's actions were willful and malicious.

Proposed law defines "department" for purposes of certain provisions of proposed law as the Dept. of Public Safety and Corrections, office of juvenile justice.

Proposed law defines "safe house" as a residential facility operated by an authorized agency, including a nonprofit agency, with experience in providing services to sexually exploited children and approved by DCFS to provide shelter for sexually exploited children.

Proposed law authorizes DCFS, to the extent funds are available, to operate or contract with an appropriate nongovernmental agency with experience working with sexually exploited children to operate one or more safe houses in a geographically appropriate area of the state. Proposed law does not preclude an agency from applying for and accepting grants, gifts, and bequests for funds from private individuals, foundations, and the federal government for the purpose of creating or carrying out the duties of a safe house for sexually exploited children.

Proposed law provides that where a petition involves an allegation of an act of prostitution, prostitution by massage, or crimes against nature by solicitation and it is the child's first offense and the child expresses a willingness to cooperate and receive specialized services for sexually exploited children, the district attorney may effect an informal adjustment agreement which includes specialized services for the child. Proposed law provides that if the child has previously been adjudicated a delinquent or is unwilling to cooperate with specialized services for sexually exploited children, continuing with the delinquency proceeding shall be within the discretion of the district attorney.

Proposed law requires that DCFS develop a statewide protocol for helping to coordinate the delivery of services to sexually exploited children and shall work with court intake officers to ensure that all state, federal, and community-based resources for sexually exploited children are known and available to children who have been granted diversion under Ch.C. Art. 839.

Proposed law for the purposes of Children's Code provisions relative to family in need of services and delinquency defines "sexually exploited child" as any person under the age of 18 when the person has been subject to sexual exploitation because the person is either a victim of trafficking of children for sexual purposes pursuant to present law, or is a victim of child sex trafficking pursuant to present federal law.

Proposed law provides that with the consent of the district attorney, a motion to set aside an adjudication of delinquency may be filed at any time following a verdict or judgment of guilty for the offenses of prostitution, prostitution by massage, or crime against nature by solicitation under present law when the defendant's participation in the offense was a result of having been a victim of human trafficking 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 moving party is entitled to relief.

Proposed law provides that the motion to set aside the adjudication of delinquency cannot be denied without a contradictory hearing unless it appears on the face of the motion that, as a matter of law, the moving party is not entitled to the relief sought. Proposed law further provides that the court shall grant the motion if it finds by a preponderance of evidence that the violation was a result of the defendant having been a victim of human trafficking. Proposed law further provides that documentation of a person's status as a victim of human trafficking provided by a federal, state, or local government agency shall create a presumption that the person's conviction was obtained as a result of having been a victim of human trafficking, but such documentation shall not be required to grant the motion.

Proposed law provides that if the motion to set aside the conviction is granted, the court shall set aside the conviction and expunge the record of the criminal proceedings, and issue an order to expunge all records and files related to the moving party's arrest, citation, investigation, charge, criminal proceedings, adjudication of guilt, and probation for the offense.

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

(Adds R.S. 15:539.1(E), 539.2, and 539.3, R.S. 46:2161-2163, Ch.C. Arts. 725-725.3, 728(6), 804(9), 839(D), and 923)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Delete proposed law provisions relative to certain crimes and the presumption that a person charged with those crimes who is under the age of 18 is a victim of child sex trafficking.
2. Clarify that proposed law reference to "auction" is to "public auction."
3. Clarify that plan to be developed by DCFS is with respect to children found to be victims of human trafficking.
4. Clarifies that certain references to "victim" are to a "child victim."
5. Changes definition of "department" in certain provisions of proposed law from DCFS to Dept. of Public Safety and Corrections, office of juvenile justice.

Committee Amendments Proposed by Senate Committee on Finance to the engrossed bill

1. Changes name of fund to Exploited Children's Special Fund.

2. Requires monies to be deposited into fund, to first be deposited into Bond Security and Redemption Fund.
3. Clarifies that monies are taken out of fund, subject to appropriation by the legislature.
4. Deletes ground that a child is a sexually exploited child to allege that a family is in need of services.
5. Deletes provisions authorizing the filing of a family in need of services petition as a substitute for a delinquency petition in certain circumstances.

Senate Floor Amendments to reengrossed bill

1. Deletes the provision requiring the Peace Officers Training Council (POST) to provide mandatory human trafficking training.
2. Requires consent of the district attorney to file a motion to set aside a conviction.
3. Technical amendments.

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the re-reengrossed bill.

1. Amended language regarding allocation of seized assets among seizing agencies.
2. Added provisions authorizing a payment plan if the offender is determined by the court to be indigent.
3. Made changes to restitution provisions relative to sex trafficking.
4. Amended the definition of "sexually exploited child".
5. Amended expungement provisions to refer to "adjudication of delinquency" instead of "conviction".
6. Added provisions regarding informal adjustment agreements.
7. Made necessary technical changes.