

SENATE BILL NO. 88

BY SENATORS BROOME, ADLEY, BUFFINGTON, CHABERT, DONAHUE, DORSEY-COLOMB, GUILLORY, JOHNS, KOSTELKA, LAFLEUR, MILLS, MURRAY, PERRY, TARVER, THOMPSON AND WHITE AND REPRESENTATIVES ABRAMSON, BARROW, WESLEY BISHOP, BROSSETT, BROWN, CARMODY, CHAMPAGNE, COX, HAVARD, HAZEL, HILL, HUNTER, JOHNSON, MORENO, ORTEGO AND POPE

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

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AN ACT

To enact R.S. 15:539.1(E), 539.2, and 539.3, Chapter 28-B of Title 46 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 46:2161 through 2163, Chapter 20 of Title VI of the Children's Code, comprised of Articles 725 to 725.3, Children's Code Arts. 728(6), 804(9), 839(D), and 923, relative to human trafficking; to provide for certain presumptions concerning children that are victims of child sex trafficking; to provide for restitution to victims; to establish and provide for a special fund in the state treasury; to provide for human trafficking victims service plans; to provide a civil cause of action for victims of human trafficking; to provide a safe harbor program for sexually exploited children; to provide for a statewide protocol; to provide procedures by which certain convictions for prostitution related to victims of human trafficking may be set aside and expunged; to provide relative to services and remedies available to victims of human trafficking under certain circumstances; to provide with respect to informal adjustment agreements; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 15:539.1(E), 539.2, and 539.3 are hereby enacted to read as follows:
§539.1. Forfeited property related to certain sex crimes; exempt property; allocation of forfeited property

* * *

E. Notwithstanding Subsection D of this Section, when the property to be forfeited is related to human trafficking under R.S. 14:46.2 or trafficking of

1 children for sexual purposes under R.S. 14:46.3, the proceeds of the public sale
2 or public auction shall be applied first to any restitution granted to the victim,
3 after the costs of the public sale or auction, court costs, and fees related to
4 seizure and storage have been satisfied. Any remaining proceeds shall be
5 distributed in the following manner:

6 (1) Twenty-five percent to the seizing agency or agencies allocated
7 among the seizing agencies in proportion to their participation in the
8 management of the investigation, seizure, and forfeiture.

9 (2) Twenty-five percent to the prosecuting agency.

10 (3) Fifty percent to the Exploited Children's Special Fund pursuant to
11 R.S. 15:539.2.

12 §539.2. Exploited Children's Special Fund

13 A. Any person who is convicted or pleads guilty or nolo contendere to
14 an offense involving trafficking of children for sexual purposes under R.S.
15 14:46.3, prostitution with persons under seventeen under R.S. 14:82.1, or
16 enticing persons into prostitution under R.S. 14:86 shall be ordered to pay a
17 mandatory monetary assessment of two thousand dollars. Notwithstanding any
18 law to the contrary, the assessments provided by this Section shall be in addition
19 to and not in lieu of, and shall not be used to offset or reduce, any fine
20 authorized or required by law. If the court finds that the offender is indigent
21 and therefore unable to pay the mandatory assessment at the time of conviction,
22 the court shall order a periodic payment plan consistent with the person's
23 financial ability.

24 B. There is established in the state treasury the Exploited Children's
25 Special Fund, hereinafter referred to as the "fund". Appropriations by the
26 legislature and all monetary assessments paid and interest accrued on funds
27 collected pursuant to Subsection A of this Section shall be deposited into the
28 Bond Security and Redemption Fund, and after a sufficient amount is allocated
29 from the Bond Security and Redemption Fund to pay all the obligations secured
30 by the full faith and credit of the state which become due and payable within

1 any fiscal year, the treasurer shall pay the remainder of such monies into the
2 fund. Subject to appropriation by the legislature, monies in the fund shall be
3 used for the provision of services and treatment administered by the
4 Department of Children and Family Services, such as securing residential
5 housing, health services, and social services, to sexually exploited children. The
6 department may also use the funds for grants or to provide services for sexually
7 exploited children.

8 §539.3 Mandatory restitution

9 A. A person convicted of a violation of R.S. 14:46.2 (human trafficking)
10 or R.S. 14:46.3 (trafficking of children for sexual purposes) shall be ordered to
11 pay mandatory restitution to the victim, with the proceeds from property
12 forfeited under R.S. 15:539.1 applied first to payment of restitution, after the
13 costs of the public sale or auction, court costs, and fees related to seizure and
14 storage have been satisfied. Restitution under this Section shall include any of
15 the following:

16 (1) Costs of medical and psychological treatment.

17 (2) Costs of necessary transportation and temporary housing.

18 (3) The greater of (a) the value of the victim's labor as guaranteed under
19 the minimum wage and overtime provisions of the federal Fair Labor Standards
20 Act; or (b) the gross income or value to the defendant of the victim's labor or
21 services engaged in by the victim while in the human trafficking situation. In
22 the case of sex trafficking, the victim shall be entitled to restitution for the
23 income he would have earned, had he not been victimized, as guaranteed under
24 the minimum wage and overtime provisions of the federal Fair Labor Standards
25 Act.

26 (4) Return of property, cost of damage to property, or full value of
27 property if destroyed or damaged beyond repair.

28 (5) Expenses incurred by the victim and any household members or
29 other family members in relocating away from the defendant or the defendant's
30 associates, including but not limited to deposits for utilities and telephone

1 service, deposits for rental housing, temporary lodging and food expenses,
 2 clothing, and personal items. Expenses incurred pursuant to this Section shall
 3 be verified by law enforcement to be necessary for the personal safety of the
 4 victim or household or family members, or by a mental health treatment
 5 provider to be necessary for the emotional well-being of the victim.

6 B. For purposes of this Section, the return of the victim to the victim's
 7 home country or other absence of the victim from the jurisdiction shall not
 8 prevent the victim from receiving restitution.

9 Section 2. Chapter 28-B of Title 46 of the Louisiana Revised Statutes of 1950,
 10 comprised of R.S. 46:2161 through 2163, is hereby enacted to read as follows:

11 CHAPTER 28-B. HUMAN TRAFFICKING VICTIMS

12 §2161. Human trafficking victims services plan

13 A. With respect to children found to be victims of human trafficking, the
 14 Department of Children and Family Services, in conjunction with the
 15 Department of Health and Hospitals, shall develop a plan for the delivery of
 16 services to victims of human trafficking. Such plan shall include provisions for:

17 (1) Identifying victims of human trafficking in Louisiana.

18 (2) Assisting victims of human trafficking with applying for federal and
 19 state benefits and services to which they may be entitled.

20 (3) Coordinating the delivery of health, mental health, housing,
 21 education, job training, child care, victims' compensation, legal, and other
 22 services to victims of human trafficking.

23 (4) Preparing and disseminating educational and training programs and
 24 materials to increase awareness of human trafficking and services available to
 25 victims of human trafficking among local departments of social services, public
 26 and private agencies and service providers, and the public.

27 (5) Referring child victims to the appropriate community-based services
 28 for victims of human trafficking.

29 (6) Assisting victims of human trafficking with family reunification or
 30 return to their place of origin, if the victims so desire.

1 **B. In developing the plan, the departments shall work together with**
2 **such other state and federal agencies, public and private entities, and other**
3 **stakeholders as they deem appropriate.**

4 **§2162. Assistance to victims of human trafficking**

5 **A. Classification of victims of human trafficking. As soon as practicable**
6 **after the initial encounter with a person who reasonably appears to a law**
7 **enforcement agency, a district attorney's office, or the office of the attorney**
8 **general to be a victim of human trafficking, such agency or office shall:**

9 **(1) Notify the Crime Victims Services Bureau of the Department of**
10 **Public Safety and Corrections that such person may be eligible for services**
11 **under this Chapter.**

12 **(2) Make a preliminary assessment of whether such victim or possible**
13 **victim of human trafficking appears to meet the criteria for certification as a**
14 **victim of a severe form of trafficking as defined in the federal Trafficking**
15 **Victims Protection Act (22 U.S.C. 7101 et seq.) or appears to be otherwise**
16 **eligible for any federal, state, or local benefits and services.**

17 **(a) If it is determined that the victim or possible victim appears to meet**
18 **such criteria, then the agency or office shall report the finding to the victim and**
19 **shall refer the child victim to appropriate services available, including legal**
20 **services providers.**

21 **(b) If the victim or possible victim is under the age of eighteen or is an**
22 **adult in need of protective services pursuant to the provisions of the Adult**
23 **Protective Services Act, the agency or office shall also notify the appropriate**
24 **protective service agency.**

25 **B. Law enforcement assistance with respect to immigration.**

26 **(1) After the agency or office makes a preliminary assessment pursuant**
27 **to Paragraph (A)(2) of this Section that a victim or possible victim of human**
28 **trafficking appears to meet the criteria for certification as a victim of a severe**
29 **form of trafficking as defined in the federal Trafficking Victims Protection Act,**
30 **and upon the request of such victim, the agency or office shall provide the**

1 victim or possible victim of human trafficking with a completed and executed
 2 United States Citizenship and Immigration Services (USCIS) Form I-914,
 3 Supplement B, Declaration of Law Enforcement Officer for Victim of Human
 4 Trafficking in Persons, or a USCIS Form I-918, Supplement B, U
 5 Nonimmigrant Status Certification, or both. These forms shall be completed
 6 by the certifying officer in accordance with the forms' instructions and
 7 applicable rules and regulations.

8 (2) The victim or possible victim of human trafficking may choose which
 9 form to have the certifying officer complete.

10 §2163. Civil cause of action for victims of human trafficking

11 An individual who is a victim of human trafficking shall have a civil
 12 cause of action in district court for injunctive relief and to recover actual
 13 damages, compensatory damages, punitive damages, and for any other
 14 appropriate relief. A prevailing plaintiff shall also be awarded court costs and
 15 attorney fees. Treble damages shall be awarded on proof of actual damages
 16 where the defendant's actions were willful and malicious.

17 Section 3. Chapter 20 of Title VI of the Children's Code, comprised of Articles 725
 18 to 725.3, and Articles 728(6), 804(9), 839(D) and 923 are hereby enacted to read as follows:

19 CHAPTER 20. SAFE HARBOR FOR SEXUALLY EXPLOITED CHILDREN

20 Art. 725. Findings and purpose

21 The legislature finds that arresting, prosecuting, and incarcerating
 22 victimized children serves to re-traumatize them and to increase their feelings
 23 of low-self esteem, which only makes the process of recovery more difficult.
 24 Both federal and international law recognize that sexually exploited children
 25 are the victims of crime and should be treated as such. Therefore, sexually
 26 exploited children should not be prosecuted for criminal acts related to
 27 prostitution. Instead, sexually exploited children should, where possible, be
 28 diverted into services that address the needs of these children outside of the
 29 justice system. Sexually exploited children deserve the protection of child
 30 welfare services, including diversion, crisis intervention, counseling, and

1 emergency housing services. The purpose of this Chapter is to protect a child
2 from further victimization after the child is discovered to be a sexually exploited
3 child by ensuring that a child protective response is in place in the state. This
4 is to be accomplished by presuming that any child engaged in prostitution,
5 prostitution by massage, or crime against nature by solicitation is a victim of sex
6 trafficking and providing these children with the appropriate care and services
7 where possible. In determining the need for and capacity of services that may
8 be provided, the Department of Children and Family Services shall recognize
9 that sexually exploited children have separate and distinct service needs
10 according to gender, and every effort should be made to ensure these children
11 are not prosecuted or treated as juvenile delinquents, but instead are given the
12 appropriate social services.

13 Art. 725.1. Definitions

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

16 (1) "Department" means the Department of Public Safety and
17 Corrections, office of juvenile justice.

18 (2) "Safe house" means a residential facility operated by an authorized
19 agency, including a nonprofit agency, with experience in providing services to
20 sexually exploited children and approved by the department to provide shelter
21 for sexually exploited children.

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

24 (a) Is a victim of trafficking of children for sexual purposes under
25 R.S.14:46.3.

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

27 Art. 725.2. Safe house for sexually exploited children

28 The department may, to the extent funds are available, operate or
29 contract with an appropriate nongovernmental agency with experience working
30 with sexually exploited children to operate one or more safe houses in a

1 geographically appropriate area of the state. Each safe house shall provide safe
 2 and secure housing and specialized services for sexually exploited children.
 3 Nothing in this Section shall be construed to preclude an agency from applying
 4 for and accepting grants, gifts, and bequests for funds from private individuals,
 5 foundations, and the federal government for the purpose of creating or carrying
 6 out the duties of a safe house for sexually exploited children.

7 Art. 725.3. Statewide protocol

8 The department shall develop a statewide protocol for helping to
 9 coordinate the delivery of services to sexually exploited children and shall work
 10 with court intake officers to ensure that all state, federal, and community-based
 11 resources for sexually exploited children are known and available to children
 12 who have been granted diversion under Article 839.

13 * * *

14 Art. 728. Definitions

15 As used in this Title:

16 * * *

17 (6) "Sexually exploited child" means any person under the age of
 18 eighteen who has been subject to sexual exploitation because the person either:

19 (a) Is a victim of trafficking of children for sexual purposes under R.S.
 20 14:46.3.

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

22 * * *

23 Art. 804. Definitions

24 As used in this Title:

25 * * *

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

28 (a) Is a victim of trafficking of children for sexual purposes under R.S.
 29 14:46.3.

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

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Art. 839. Availability of an informal adjustment agreement

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D.(1) Where a petition involves an allegation of an act of prostitution pursuant to R.S. 14:82, prostitution by massage pursuant to R.S. 14:83.3 or 83.4, or crimes against nature by solicitation pursuant to R.S. 14:89.2 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.

(2) If, however, the child has previously been adjudicated a delinquent in violation of R.S. 14:82, 83.3, 83.4, or 89.2 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.

(3) The specialized services referenced in Paragraph (1) of this Subsection may include but are not limited to safe and stable housing, comprehensive on-site case management, integrated mental health and chemical dependency services, including specialized trauma recovery services, education and employment training, and referrals to off-site specialized services, as appropriate.

* * *

Art. 923. Expungement of adjudications involving human trafficking victims

A. A motion to set aside an adjudication pursuant to the provisions of this Article, may be filed and served upon the district attorney at any time following an adjudication of delinquency and completion of the disposition relating thereto involving the offenses of prostitution pursuant to R.S. 14:82, prostitution by massage pursuant to R.S. 14:83.3 or 83.4, or crime against nature by solicitation pursuant to R.S. 14:89.2 when the child's participation in the offense was a result of having been a victim of human trafficking under R.S. 14:46.2 or a victim of a severe form of trafficking under the federal Trafficking

1 Victims Protection Act (22 U.S.C. 7101 et seq.).

2 B. The motion shall be in writing, shall describe the supporting evidence
3 with particularity, and shall include copies of any documents showing that the
4 child is entitled to relief under this Article.

5 C. The motion shall not be denied without a contradictory hearing
6 unless it appears on the face of the motion that, as a matter of law, the child is
7 not entitled to the relief sought.

8 D. The court shall grant the motion if the court finds by a
9 preponderance of the evidence that the violation was a result of the child having
10 been a victim of human trafficking. Documentation of a child's status as a
11 victim of human trafficking provided by a federal, state, or local government
12 agency shall create a presumption that the child's adjudication was obtained as
13 a result of having been a victim of human trafficking. However, such
14 documentation shall not be required to grant a motion under this Section.

15 E. If the motion is granted, the court shall order the expungement of the
16 record of the delinquency proceedings including but not limited to all records
17 and files related to the child's arrest, citation, investigation, charge, delinquency
18 proceedings, adjudication, and probation for the offense.

19 Section 4. This Act shall become effective upon signature by the governor or, if not
20 signed by the governor, upon expiration of the time for bills to become law without signature
21 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
22 vetoed by the governor and subsequently approved by the legislature, this Act shall become
23 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____