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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 in an equitable manner.
- (2) 25% to the prosecuting agency.
- (3) 50% to the Exploited Children's Special Fund.

Proposed law creates in the state treasury the Exploited Children's Special Fund. Appropriations by the legislature and all monetary assessments paid and interest accrued on funds collected as provided below shall be deposited into the fund, after first being deposited into the Bond Security and Redemption 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.

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 any of the following:

- (1) Costs of medical and psychological treatment.
- (2) Costs of necessary transportation and temporary housing.
- (3) The greater of (a) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the federal Fair Labor Standards Act; or (b) the gross income or value to the defendant of the victim's labor or services or of any commercial sex acts engaged in by the victim while in the human trafficking situation.
- (4) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair.
- (5) Expenses incurred by the victim and any household members or other family members in relocating away from the defendant or the defendant's associates including but not limited to deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to proposed law shall be verified by law enforcement to be necessary for the personal safety of the victim or household or family members, or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

Proposed law provides that for purposes of proposed law, the return of the victim to the victim's home country or other absence of the victim from the jurisdiction shall not prevent the victim from receiving restitution.

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, is to develop a plan for the delivery of services to victims of human trafficking, which plan is to include provisions for:

- (1) Identifying victims of human trafficking in Louisiana.
- (2) Assisting victims of human trafficking with applying for federal and state benefits and services to which they may be entitled.

- (3) Coordinating the delivery of health, mental health, housing, education, job training, child care, victims' compensation, legal, and other services to victims of human trafficking.
- (4) Preparing and disseminating educational and training programs and materials to increase awareness of human trafficking and services available to victims of human trafficking among local departments of social services, public and private agencies and service providers, and the public.
- (5) Developing and maintaining community-based services for victims of human trafficking.
- (6) Assisting victims of human trafficking with family reunification or return to their place of origin, if the victims so desire.

Proposed law provides that in developing the plan, the departments are to 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 is a vulnerable adult, the agency or office is to 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 (USCIS) Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Human Trafficking in Persons, or a USCIS Form I-918, Supplement B, U Nonimmigrant Status Certification, or both. Proposed law further provides that these forms are to be completed by the certifying officer in accordance with the forms' instructions and applicable rules and regulations, and that the victim or possible victim of human trafficking may choose which form to have the certifying officer complete.

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 provides that the legislature finds that arresting, prosecuting, and incarcerating victimized children serves to re-traumatize them and to increase their feelings of low-self esteem, which only makes 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 not be prosecuted for criminal acts related to prostitution. Instead, sexually exploited children should, where possible, be diverted into services that address the needs of these children outside of the justice system. Sexually exploited children deserve the protection of child welfare services, including diversion, crisis intervention, counseling, and emergency housing services. The purpose of proposed law is to protect a child from further victimization after the child is discovered to be a sexually exploited child by ensuring that a child protective response is in place in the state. This is to be accomplished by presuming that any child engaged in prostitution, prostitution by massage, or crime against nature by solicitation is a victim of sex trafficking and providing these children with the appropriate care and services where possible. In determining the need for and capacity of services that may be provided, the DCFS 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, but instead are given the appropriate social services.

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. Also defines a "sexually exploited child" as any person under the age of 18 who has been subject to sexual exploitation because the person either:

- (1) Is a victim of trafficking of children for sexual purposes (R.S.14:46.3).
- (2) Is a victim of child sex trafficking under 18 U.S.C. 1591.
- (3) Engages in an act of prostitution (R.S.14:82), prostitution by massage (R.S.14:83.3 or 83.4), or a crime against nature by solicitation (R.S.14:89.2).

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. Each safe house shall provide safe and secure housing and specialized services for sexually exploited

children. 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 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" means any person under the age of 18 who has been subject to sexual exploitation because the person either:

- (1) Is a victim of trafficking of children for sexual purposes (R.S. 14:46.3).
- (2) Is a victim of child sex trafficking under 18 U.S.C. 1591.
- (3) Engages in an act of prostitution (R.S. 14:82), prostitution by massage (R.S. 14:83.3 or 83.4), or a crime against nature by solicitation (R.S. 14:89.2).

Proposed law provides that with the consent of the district attorney, a motion to set aside a conviction 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 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 moving party is entitled to relief.

Proposed law provides that the motion to set aside the conviction 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 is to 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 will 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 is to 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. Proposed law further provides that the court may also provide whatever other relief justice requires.

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), and 804(9), and C.Cr.P. Art. 930.10)

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.