

Regular Session, 2013

SENATE BILL NO. 54

BY SENATOR BROOME

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

SEX OFFENSES. Provides relative to victims of human trafficking. (gov sig)

1 AN ACT
2 To enact Code of Criminal Procedure Article 930.10 and Chapter 28-B of Title 46 of the
3 Louisiana Revised Statutes of 1950, to be comprised of R.S. 46:2162 through 2164,
4 relative to human trafficking; to provide procedures by which certain convictions for
5 prostitution related to victims of human trafficking may be set aside and expunged;
6 to provide relative to services and remedies available to victims of human trafficking
7 under certain circumstances; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Criminal Procedure Article 930.10 is hereby enacted to read as
10 follows:

11 **Art. 930.10. Motion to set aside prostitution conviction for human trafficking**
12 **victims**

13 **A. A motion to set aside a conviction under this Section may be filed at**
14 **any time following a verdict or judgment of guilty for the offenses of**
15 **prostitution (R.S. 14:82), prostitution by massage (R.S. 14:83.3 and 83.4), or**
16 **crime against nature by solicitation (R.S. 14:89.2) when the defendant's**
17 **participation in the offense was a result of having been a victim of human**

1 trafficking under R.S. 14:46.2 or a victim of a severe form of trafficking under
2 the federal Trafficking Victims Protection Act (22 U.S.C. Section 7101 et seq.).

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

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

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

16 E. If the motion is granted, the court shall set aside the conviction and
17 expunge the record of the criminal proceedings. The court shall issue an order
18 to expunge all records and files related to the moving party's arrest, citation,
19 investigation, charge, criminal proceedings, adjudication of guilt, and probation
20 for the offense. The court may also provide whatever other relief justice
21 requires.

22 Section 2. Chapter 28-B of Title 46 of the Louisiana Revised Statutes of 1950,
23 comprised of R.S. 46:2162 through 2164, is hereby enacted to read as follows:

24 **CHAPTER 28-B. HUMAN TRAFFICKING VICTIMS ACT**

25 **§2162. Human trafficking victims services plan**

26 **A. The Department of Children and Family Services, in conjunction with**
27 **the Department of Health and Hospitals, shall develop a plan for the delivery**
28 **of services to victims of human trafficking. Such plan shall include provisions**
29 **for:**

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

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

4 **(3) Coordinating the delivery of health, mental health, housing,**
5 **education, job training, child care, victims' compensation, legal, and other**
6 **services to victims of human trafficking.**

7 **(4) Preparing and disseminating educational and training programs and**
8 **materials to increase awareness of human trafficking and services available to**
9 **victims of human trafficking among local departments of social services, public**
10 **and private agencies and service providers, and the public.**

11 **(5) Developing and maintaining community-based services for victims**
12 **of human trafficking.**

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

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

18 **§2163. Assistance to victims of human trafficking**

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

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

26 **(2) Make a preliminary assessment of whether such victim or possible**
27 **victim of human trafficking appears to meet the criteria for certification as a**
28 **victim of a severe form of trafficking in persons as defined in the federal**
29 **Trafficking Victims Protection Act (22 U.S.C. Section 7101 et seq.) or appears**

1 to be otherwise eligible for any federal, state, or local benefits and services.

2 (a) If it is determined that the victim or possible victim appears to meet
3 such criteria, then the agency or office shall report the finding to the victim and
4 shall refer the victim to services available, including legal services providers.

5 (b) If the victim or possible victim is under the age of eighteen or is a
6 vulnerable adult, the agency or office shall also notify the Department of
7 Children and Family Services.

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

9 (1) After the agency or office makes a preliminary assessment pursuant
10 to Paragraph (A)(2) of this Section that a victim or possible victim of human
11 trafficking appears to meet the criteria for certification as a victim of a severe
12 form of trafficking in persons as defined in the federal Trafficking Victims
13 Protection Act, and upon the request of such victim, the agency or office shall
14 provide the victim or possible victim of human trafficking with a completed and
15 executed United States Citizenship and Immigration Services (USCIS) Form
16 I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of
17 Human Trafficking in Persons, or a USCIS Form I-918, Supplement B, U
18 Nonimmigrant Status Certification, or both. These forms shall be completed
19 by the certifying officer in accordance with the forms' instructions and
20 applicable rules and regulations.

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

23 **§2164. Civil cause of action for victims of human trafficking**

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

1 Section 3. This Act shall become effective upon signature by the governor or, if not
2 signed by the governor, upon expiration of the time for bills to become law without signature
3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
4 vetoed by the governor and subsequently approved by the legislature, this Act shall become
5 effective on the day following such approval.

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

DIGEST

Proposed law provides that 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.

Proposed law provides that the Dept. of Children and Family Services, 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 victim to 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 Dept. of Children and Family Services.

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.

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

(Adds C.Cr.P. Art. 930.10 and R.S. 46:2162-2164)