

Regular Session, 2013

SENATE BILL NO. 88

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)

AN ACT

To enact R.S. 14:82(H), 83.3(E), 83.4(D), and 89.2(E), R.S. 15:539.1(E), 539.2, and 539.3, R.S. 40:2406.1, 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 Louisiana Children's Code, comprised of Articles 725 to 725.3, Louisiana Children's Code Arts. 728(6), 730(12), 804(9), and 839(D) and Code of Criminal Procedure Art. 930.10, 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 law enforcement human trafficking training; 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 alternate procedures to delinquency proceedings to children involved in the violation of certain sex offenses; 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; and to provide for

1 related matters.

2 Be it enacted by the Legislature of Louisiana:

3 Section 1. R.S. 14:82(H), 83.3(E), 83.4(D), and 89.2(E) are hereby enacted to read
4 as follows:

5 §82. Prostitution; definition; penalties; enhancement

6 * * *

7 **H. Notwithstanding the foregoing, if it is determined, after a reasonable**
8 **detention for investigative purposes, that a person suspected of or charged with**
9 **a violation of this Section is a person under the age of eighteen, there shall be**
10 **a presumption that the person is a victim of child sex trafficking and should be**
11 **treated as a child in need of care pursuant to Article 606 of the Children's Code.**

12 * * *

13 §83.3. Prostitution by massage

14 * * *

15 **E. Notwithstanding the foregoing, if it is determined, after a reasonable**
16 **detention for investigative purposes, that a person suspected of or charged with**
17 **a violation of this Section is a person under the age of eighteen, there shall be**
18 **a presumption that the person is a victim of child sex trafficking and should be**
19 **treated as a child in need of care pursuant to Article 606 of the Children's Code.**

20 §83.4. Massage; sexual conduct prohibited

21 * * *

22 **D. Notwithstanding the foregoing, if it is determined, after a reasonable**
23 **detention for investigative purposes, that a person suspected of or charged with**
24 **a violation of this Section is a person under the age of eighteen, there shall be**
25 **a presumption that the person is a victim of child sex trafficking and should be**
26 **treated as a child in need of care pursuant to Article 606 of the Children's Code.**

27 * * *

28 §89.2. Crime against nature by solicitation

29 * * *

1 **E. Notwithstanding the foregoing, if it is determined, after a reasonable**
 2 **detention for investigative purposes, that a person suspected of or charged with**
 3 **a violation of this Section is a person under the age of eighteen, there shall be**
 4 **a presumption that the person is a victim of child sex trafficking and should be**
 5 **treated as a child in need of care pursuant to Article 606 of the Children's Code.**

6 Section 2. R.S. 15:539.1(E), 539.2, and 539.3 are hereby enacted to read as follows:

7 §539.1. Forfeited property related to certain sex crimes; exempt property; allocation
 8 of forfeited property

9 * * *

10 **E. Notwithstanding the foregoing, where the property to be forfeited is**
 11 **related to human trafficking under R.S. 14:46.2 or trafficking of children for**
 12 **sexual purposes under R.S. 14:46.3, the proceeds of the public sale or auction**
 13 **shall be applied first to any restitution granted to the victim, after the costs of**
 14 **the public sale or auction, court costs, or fees related to seizure and storage have**
 15 **been satisfied. Any remaining proceeds shall be distributed in the following**
 16 **manner:**

17 **(1) Twenty-five percent to the seizing agency or agencies in an equitable**
 18 **manner.**

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

20 **(3) Fifty percent to the Sexually Exploited Children's Special Fund**
 21 **pursuant to R.S. 15:539.2.**

22 **§539.2. Sexually Exploited Children's Special Fund**

23 **A. Any person who is convicted, pleads guilty, or nolo contendere to an**
 24 **offense involving trafficking of children for sexual purposes under R.S. 14:46.3,**
 25 **prostitution with persons under seventeen under R.S. 14:82.1, or enticing**
 26 **persons into prostitution under R.S. 14:86 shall be ordered to pay a mandatory**
 27 **monetary assessment of two thousand dollars. Notwithstanding any law to the**
 28 **contrary, the assessments provided by this Section shall be in addition to and**
 29 **not in lieu of, and shall not be used to offset or reduce, any fine authorized or**

1 required by law.

2 B. There is established in the state treasury the Sexually Exploited
3 Children's Special Fund, hereinafter referred to as the "fund". Appropriations
4 by the legislature and all monetary assessments paid and interest accrued on
5 funds collected pursuant to Subsection A shall be deposited into the fund.
6 Monies in the fund shall be used for the provision of services and treatment
7 administered by the Department of Children and Family Services, such as
8 securing residential housing, health services, and social services, to sexually
9 exploited children. The department may also use the funds for grants or to
10 provide services for sexually exploited children.

11 §539.3 Mandatory restitution

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

19 (1) Costs of medical and psychological treatment.

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

21 (3) The greater of (i) the value of the victim's labor as guaranteed under
22 the minimum wage and overtime provisions of the federal Fair Labor Standards
23 Act; or (ii) the gross income or value to the defendant of the victim's labor or
24 services or of any commercial sex acts engaged in by the victim while in the
25 human trafficking situation.

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 a victim and any household members or other
29 family members in relocating away from the defendant or the defendant's

1 associates, including but not limited to deposits for utilities and telephone
2 service, deposits for rental housing, temporary lodging and food expenses,
3 clothing, and personal items. Expenses incurred pursuant to this Section shall
4 be verified by law enforcement to be necessary for the personal safety of the
5 victim or household or family members, or by a mental health treatment
6 provider to be necessary for the emotional well-being of the victim.

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

10 Section 3. R.S. 40:2406.1 is hereby enacted to read as follows:

11 §2406.1. Human trafficking training

12 A. The council shall provide mandatory training for law enforcement
13 agencies in addressing human trafficking.

14 B. Such training shall focus on all of the following:

15 (1) Investigating human trafficking under R.S. 14:46.2.

16 (2) Investigating trafficking of children for sexual purposes under R.S.
17 14:46.3 and the special needs of sexually exploited children.

18 (3) Methods used in identifying United States citizen and foreign national
19 victims of human trafficking, including preliminary interview techniques and
20 appropriate questioning methods.

21 (4) Methods of increasing effective collaboration with non-governmental
22 organizations and other relevant social service organizations in the course of
23 investigating and prosecuting a human trafficking case.

24 (5) Methods for protecting the rights of victims of human trafficking,
25 taking into account the need to consider human rights and the special needs of
26 women victims.

27 (6) The necessity of treating victims of human trafficking as crime
28 victims rather than criminals.

29 (7) Methods for promoting the safety of victims of human trafficking.

1 C. The council shall seek input and participation of appropriate
 2 non-governmental organizations and other relevant organizations in the
 3 preparation and presentation of training called for in this Section.

4 Section 4. Chapter 28-B of Title 46 of the Louisiana Revised Statutes of 1950,
 5 comprised of R.S. 46:2161 through 2163, is hereby enacted to read as follows:

6 CHAPTER 28-B. HUMAN TRAFFICKING VICTIMS

7 §2161. Human trafficking victims services plan

8 A. The Department of Children and Family Services, in conjunction with
 9 the Department of Health and Hospitals, shall develop a plan for the delivery
 10 of services to victims of human trafficking. Such plan shall include provisions
 11 for:

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

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

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

18 (4) Preparing and disseminating educational and training programs and
 19 materials to increase awareness of human trafficking and services available to
 20 victims of human trafficking among local departments of social services, public
 21 and private agencies and service providers, and the public.

22 (5) Developing and maintaining community-based services for victims
 23 of human trafficking.

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

26 B. In developing the plan, the departments shall work together with such
 27 other state and federal agencies, public and private entities, and other
 28 stakeholders as they shall deem appropriate.

29 §2162. Assistance to victims of human trafficking

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

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

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

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

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

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

20 **(1) After the agency or office makes a preliminary assessment pursuant**
21 **to Paragraph (A)(2) of this Section that a victim or possible victim of human**
22 **trafficking appears to meet the criteria for certification as a victim of a severe**
23 **form of trafficking in persons as defined in the federal Trafficking Victims**
24 **Protection Act, and upon the request of such victim, the agency or office shall**
25 **provide the victim or possible victim of human trafficking with a completed and**
26 **executed United States Citizenship and Immigration Services (USCIS) Form**
27 **I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of**
28 **Human Trafficking in Persons, or a USCIS Form I-918, Supplement B, U**
29 **Nonimmigrant Status Certification, or both. These forms shall be completed**

1 by the certifying officer in accordance with the forms' instructions and
2 applicable rules and regulations.

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

5 §2163. Civil cause of action for victims of human trafficking

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

12 Section 5. Chapter 20 of Title VI of the Louisiana Children's Code, comprised of
13 Articles 725 to 725.3, and Articles 728(6), 730(12), 804(9), and 839(D) are hereby enacted
14 to read as follows:

15 CHAPTER 20. SAFE HARBOR FOR SEXUALLY EXPLOITED CHILDREN

16 Art. 725. Findings and purpose

17 The legislature finds that arresting, prosecuting, and incarcerating
18 victimized children serves to re-traumatize them and to increase their feelings
19 of low-self esteem, which only makes the process of recovery more difficult.
20 Both federal and international law recognize that sexually exploited children
21 are the victims of crime and should be treated as such. Therefore, sexually
22 exploited children should not be prosecuted for criminal acts related to
23 prostitution. Instead, sexually exploited children should, where possible, be
24 diverted into services that address the needs of these children outside of the
25 justice system. Sexually exploited children deserve the protection of child
26 welfare services, including diversion, crisis intervention, counseling, and
27 emergency housing services. The purpose of this Chapter is to protect a child
28 from further victimization after the child is discovered to be a sexually exploited
29 child by ensuring that a child protective response is in place in the state. This

1 is to be accomplished by presuming that any child engaged in prostitution,
2 prostitution by massage, or crime against nature by solicitation is a victim of sex
3 trafficking and providing these children with the appropriate care and services
4 where possible. In determining the need for and capacity of services that may
5 be provided, the Department of Children and Family Services shall recognize
6 that sexually exploited children have separate and distinct service needs
7 according to gender, and every effort should be made to ensure these children
8 are not prosecuted or treated as juvenile delinquents, but instead are given the
9 appropriate social services.

10 Art. 725.1. Definitions

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

13 (1) "Department" means the Department of Children and Family
14 Services.

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

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

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

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

24 (c) Engages in an act of prostitution pursuant to R.S.14:82, prostitution
25 by massage pursuant to R.S.14:83.3 or 83.4, or a crime against nature by
26 solicitation pursuant to R.S.14:89.2.

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 non-governmental agency with experience

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

8 Art. 725.3. Statewide protocol

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

14 * * *

15 Art. 728. Definitions

16 As used in this Title:

17 * * *

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

20 (a) Is a victim of trafficking of children for sexual purposes under R.S.
 21 14:46.3.

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

23 (c) Engages in an act of prostitution pursuant to R.S. 14:82, prostitution
 24 by massage pursuant to R.S. 14:83.3 or 83.4, or a crime against nature by
 25 solicitation pursuant to R.S. 14:89.2.

26 * * *

27 Art. 730. Grounds

28 Allegations that a family is in need of services must assert whether the child
 29 is currently under the supervision of any state or local entity including, but not

1 limited to, the Department of Children and Family Services or the Department of
2 Public Safety and Corrections, youth services, the office of juvenile justice, and
3 assert one or more of the following grounds:

4 * * *

5 **(12) That a child is a sexually exploited child.**

6 * * *

7 Art. 804. Definitions

8 As used in this Title:

9 * * *

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

12 **(a) Is a victim of trafficking of children for sexual purposes under R.S.**
13 **14:46.3.**

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

15 **(c) Engages in an act of prostitution pursuant to R.S. 14:82, prostitution**
16 **by massage pursuant to R.S. 14:83.3 or 83.4, or a crime against nature by**
17 **solicitation pursuant to R.S.14:89.2.**

18 * * *

19 Art. 839. Availability of an informal adjustment agreement

20 * * *

21 **D. Beginning June 1, 2015:**

22 **(1) Where a delinquency petition involves the violation of R.S. 14:82**
23 **(prostitution), R.S. 14:83.3 (prostitution by massage), R.S. 14:83.4 (massage;**
24 **sexual conduct prohibited), or R.S. 14:89.2 (crime against nature by solicitation)**
25 **and it is the respondent's first offense, and the respondent expresses a**
26 **willingness to cooperate and receive specialized services for sexually exploited**
27 **children, a family in need of services petition shall be substituted for the**
28 **delinquency petition and the court may order specialized services for the child.**

29 **(2) If, however, the respondent has previously been found in violation**

1 of R.S. 14.82, 83.3, 83.4, or 89.2 or expresses a current unwillingness to
2 cooperate with specialized services for sexually exploited children, continuing
3 with the delinquency proceedings shall be within the court's discretion.

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

10 Section 6. Code of Criminal Procedure Article 930.10 is hereby enacted to read as
11 follows:

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

14 A. A motion to set aside a conviction under this Section may be filed at
15 any time following a verdict or judgment of guilty for the offenses of
16 prostitution (R.S. 14:82), prostitution by massage (R.S. 14:83.3 or 83.4), or
17 crime against nature by solicitation (R.S. 14:89.2) when the defendant's
18 participation in the offense was a result of having been a victim of human
19 trafficking under R.S. 14:46.2 or a victim of a severe form of trafficking under
20 the federal Trafficking Victims Protection Act (22 U.S.C. 7101 et seq.).

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

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

27 D. The court shall grant the motion if the court finds by a preponderance
28 of the evidence that the violation was a result of the defendant having been a
29 victim of human trafficking. Documentation of a person's status as a victim of

1 **human trafficking provided by a federal, state, or local government agency shall**
 2 **create a presumption that the person's conviction was obtained as a result of**
 3 **having been a victim of human trafficking. However, such documentation shall**
 4 **not be required to grant a motion under this Section.**

5 **E. If the motion is granted, the court shall set aside the conviction and**
 6 **expunge the record of the criminal proceedings. The court shall issue an order**
 7 **to expunge all records and files related to the moving party's arrest, citation,**
 8 **investigation, charge, criminal proceedings, adjudication of guilt, and probation**
 9 **for the offense. The court may also provide whatever other relief justice**
 10 **requires.**

11 Section 7. This Act shall become effective upon signature by the governor or, if not
 12 signed by the governor, upon expiration of the time for bills to become law without signature
 13 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 14 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 15 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 Jerry J. Guillot.

DIGEST

Present law establishes and provides for the crimes prostitution, prostitution by massage, massage; sexual conduct prohibited, and crime against nature by solicitation. Proposed law retains present law and adds that if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of any of these offenses is a person under the age of 18, there shall be a presumption that the person is a victim of child sex trafficking and should be treated as a child in need of care pursuant to Ch.C. Art. 606.

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, or 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 Sexually Exploited Children's Special Fund.

Proposed law creates in the state treasury the Sexually 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. 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, 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 auction, court costs, or 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 (i) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the federal Fair Labor Standards Act; or (ii) 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 a 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 requires that the Peace Officers Training Council (POST) provide mandatory training for law enforcement agencies in addressing human trafficking with such training to focus on:

- (1) Investigating human trafficking under R.S. 14:46.2.
- (2) Investigating trafficking of children for sexual purposes under R.S. 14:46.3 and the special needs of sexually exploited children.
- (3) Methods used in identifying U.S. citizen and foreign national victims of human

- trafficking, including preliminary interview techniques and appropriate questioning methods.
- (4) Methods of increasing effective collaboration with non-governmental organizations and other relevant social service organizations in the course of investigating and prosecuting a human trafficking case.
 - (5) Methods for protecting the rights of victims of human trafficking, taking into account the need to consider human rights and the special needs of women victims.
 - (6) The necessity of treating victims of human trafficking as crime victims rather than criminals.
 - (7) Methods for promoting the safety of victims of human trafficking.

Proposed law provides that POST shall seek input and participation of appropriate non-governmental organizations and other relevant organizations in the preparation and presentation of the training called for in proposed law.

Proposed law provides that 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 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 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 "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 non-governmental 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 adds that a child is a sexually exploited child as an additional ground that may be asserted with allegations that a family is in need of services in addition to whether the child is currently under the supervision of any state or local entity including but not limited to the DCFS or the Department of Public Safety and Corrections, youth services, the office of juvenile justice.

Present law provides, relative to delinquency, prior to the filing of a petition, the district attorney or the court with the consent of the district attorney may authorize an informal adjustment agreement. Further provides that after the filing of a petition but before the attachment of jeopardy, the court may authorize the district attorney or probation officer to effect an informal adjustment agreement if the child and district attorney have no objection. The court may, with concurrence of the district attorney, dismiss the petition or allow the petition to remain pending during the period of informal adjustment. When entering an informal adjustment agreement, the court may, with concurrence of the district attorney, utilize or initiate a teen or youth court program and may assess a fee to a participant in the program to offset costs.

Proposed law retains present law and further provides that beginning June 1, 2015:

- (1) Where a delinquency petition involves the violation of R.S. 14:82 (prostitution), R.S. 14:83.3 (prostitution by massage), R.S. 14:83.4 (massage; sexual conduct prohibited), or R.S. 14:89.2 (crime against nature by solicitation) and it is the respondent's first offense, and the respondent expresses a willingness to cooperate and receive specialized services for sexually exploited children, a family in need of services petition shall be substituted for the delinquency petition and the court may order specialized services for the child.
- (2) If, however, the respondent has previously been found in violation of R.S. 14:82, 83.3, 83.4, or 89.2 or expresses a current unwillingness to cooperate with specialized services for sexually exploited children, continuing with the delinquency proceedings

shall be within the court's discretion.

- (3) The specialized services referenced in (1) may include but is 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.

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.

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

(Adds R.S. 14:82(H), 83.3(E), 83.4(D), and 89.2(E), R.S. 15:539.1(E), 539.2, and 539.3, R.S. 40:2406.1, R.S. 46:2161-2163, Ch.C. Arts. 725-725.3, 728(6), 730(12), 804(9), and 839(D) and C.Cr.P. Art. 930.10)