

2017 Regular Session

SENATE BILL NO. 54

BY SENATOR MIZELL (On Recommendation of the Louisiana State Law Institute)

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

CHILDREN. Provides relative to exploited children. (8/1/17)

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AN ACT

To amend and reenact Children's Code Article 116(25), the introductory paragraph of Children's Code Article 606(A), 606(A)(7), the introductory paragraph of Children's Code Article 622(B), 725.1, 725.2, and 725.3, and R.S. 46:1403.1, to enact Children's Code Article 622(B)(5), 725.4, 725.5, 725.6, 725.7 and 725.8, and to repeal Children's Code Article 923, relative to human trafficking of children; to provide findings and purpose; to provide for definitions; to provide for duties of law enforcement; to provide for duties of the Department of Children and Family Services; to provide for confidentiality; to provide for expungement; to provide for terms, conditions, requirements, and procedures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Children's Code Article 116(25), the introductory paragraph of Children's Code Article 606(A), 606(A)(7), the introductory paragraph of Children's Code Article 622(B), 725.1, 725.2, and 725.3 are hereby amended and reenacted and Children's Code Articles 622(B)(5), 725.4, 725.5, 725.6, 725.7 and 725.8 are hereby enacted to read as follows:

Art. 116. Definitions



1 Art. 725.1. Definitions

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

4 **(1) "Commercial sexual exploitation" means any sexual act performed**  
5 **or conducted when anything of value has been given, promised, or received by**  
6 **any person.**

7 (2) "Safe house" means a residential facility or a shelter care facility  
8 operated by an authorized agency, including a nonprofit agency, with experience in  
9 providing services to sexually exploited children and approved by the department to  
10 provide shelter for sexually exploited children. **Safe houses shall include those**  
11 **licensed residential homes that specialize in the provision of services to children**  
12 **who are victims of commercial sexual exploitation children provided for in**  
13 **Children's Code Article 725.2.**

14 (3) "Sexually exploited child" means any person under the age of eighteen  
15 who has been subject to sexual exploitation or commercial sexual exploitation  
16 because the person either:

17 (a) Is a victim of trafficking of children for sexual purposes under R.S.  
18 14:46.3.

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

20 ~~(4)~~ **(4)** "Department" means the Department of ~~Public Safety and Corrections,~~  
21 ~~office of juvenile justice~~ **Children and Family Services.**

22 Art. 725.2. Safe house for sexually exploited children; **lack of child's capacity to**  
23 **consent to exploitation**

24 **A.(1) The department shall identify and maintain a current listing of safe**  
25 **houses which are licensed residential homes that specialize in the provision of**  
26 **services to sexually exploited children, whether or not those facilities receive**  
27 **taxpayer funding. This listing shall be made available to courts, prosecutors,**  
28 **and other stakeholders involved in proceedings pertaining an exploited child.**

29 **(2)** The department may, to the extent funds are available, operate or contract

1 with an appropriate nongovernmental agency with experience working with sexually  
2 exploited children to operate one or more safe houses in a geographically appropriate  
3 area of the state.

4 (3) Each safe house shall provide safe and secure housing and specialized  
5 services for sexually exploited children.

6 (4) Nothing in this Article shall be construed to preclude an agency from  
7 applying for and accepting grants, gifts, and bequests for funds from private  
8 individuals, foundations, and the federal government for the purpose of creating or  
9 carrying out the duties of a safe house for sexually exploited children.

10 B. Each safe house ~~operating under a contract~~ **listed** with the department to  
11 provide services to sexually exploited children pursuant to the provisions of this  
12 Article shall submit to the department an annual report on their operations including  
13 information on the services offered, geographic areas served, number of children  
14 served, and individual status updates on each child served. This information shall not  
15 include the name, address, or other identifying information of the child served. The  
16 department shall compile the data from all the reports submitted by each safe house  
17 pursuant to the provisions of this Article and shall provide this information in an  
18 annual report to the legislature on or before the first day of February each year.

19 **C.(1) A child lacks the capacity to consent to commercial sexual activity.**  
20 **Any child who is taken into custody for prostitution, prostitution by massage,**  
21 **or any crime against nature as well as a child who is a victim of trafficking for**  
22 **sexual purposes is conclusively presumed to be exploited, and shall not be**  
23 **prosecuted, convicted, or adjudicated for any criminal or delinquency offenses**  
24 **related to commercial sexual activity.**

25 **(2) A child lacks the capacity to consent to any act of labor trafficking.**  
26 **A child engaged in any act of labor trafficking, including involuntary servitude,**  
27 **peonage, or slavery, is conclusively presumed to be a victim of labor trafficking,**  
28 **and shall not be prosecuted, convicted, or adjudicated for any criminal or**  
29 **delinquency offenses related to labor trafficking.**

1 Art. 725.3. Statewide protocol; **applicability of child in need of care procedure**

2 (1) The department shall develop a statewide protocol for helping to  
3 coordinate the delivery of services to sexually exploited children and shall work with  
4 court intake officers to ensure that all state, federal, and community-based resources  
5 for sexually exploited children are known and available to children who have been  
6 granted diversion under Article 839.

7 (2) **A child who is a victim of commercial sexual exploitation or human**  
8 **trafficking is a child in need of care, and unless otherwise specified in this**  
9 **Chapter, the provisions of Title VI of this Code shall govern, when applicable.**

10 **Art. 725.4. Duties of law enforcement**

11 **A.(1) After the initial encounter or interview with a child reasonably**  
12 **believed to be a victim of commercial sexual exploitation of human trafficking,**  
13 **and the police officer or a probation officer of the court believe that the child's**  
14 **parent or caretaker is not culpable, the police officer or probation officer shall**  
15 **immediately notify the parents or guardian to come take physical custody of the**  
16 **child.**

17 (2) **If the officer believes that the child was abused or neglected by a**  
18 **parent or caretaker, a person who maintains an interpersonal dating or**  
19 **engagement relationship with the parent or caretaker, or a person living in the**  
20 **same residence with the parent or caretaker as a spouse whether married or not**  
21 **and immediate removal appears to be necessary for his protection, and**  
22 **protective custody pursuant to Article 725.5 is not necessary, the officer shall**  
23 **have the responsibility to promptly notify and release the child to the**  
24 **department. In all other situations, except when protective custody pursuant to**  
25 **Article 725.5 is necessary, the officer shall refer the child to the local child**  
26 **advocacy center or other community agency for services.**

27 **B. The officer shall notify the Crime Victims Services Bureau of the**  
28 **Department of Public Safety and Corrections that the child may be eligible for**  
29 **special services and, as a mandatory reporter as required by Children's Code**

1 Article 610, shall notify the Department of Children and Family Services that  
2 the child is in need of protective services.

3 C. If the child is taken into custody pursuant to Paragraph A of this  
4 Article, but is not released to the department, the officer shall file a complaint  
5 alleging that the child is in need of care in the appropriate juvenile court.

6 Comments - 2017

7 (a) Often the first official to come into contact with an exploited child is a  
8 peace officer, but whoever is the official, that professional must be the one to  
9 activate the protective services that are available at the state or community level.  
10 Although Article 725.3 provides that all provisions of the Child in Need of Care Title  
11 are generally applicable, Paragraph A of this Article specifically provides that an  
12 officer's apprehension of a child reasonably believed to be exploited is authorized  
13 without a warrant in accordance with Article 621.

14 (b) Paragraph B of this Article notes that the officers are mandatory reporters  
15 of facts reasonably indicating exploitation. See Arts. 603(17)(e) and 610(A). R.S.  
16 46:2162 also provides for assistance to victims of human trafficking and requires  
17 notification to the Crime Victims Services Bureau. See Art. 622, which imposes  
18 limitations on the places where an exploited child can be housed.

19 (c) Paragraph C of this Article ensures continuing juvenile court oversight of  
20 the victim.

21 Art. 725.5. Protective custody

22 A. Based upon an affidavit executed by a peace officer or other credible  
23 person that to the best of his knowledge and belief, the exploited child appears  
24 to be mentally ill or suffering from substance abuse and is in need of immediate  
25 treatment, the court may, in accordance with Article 1432, order that the child  
26 be taken to a community mental health center, a public or private general  
27 hospital, or a detoxification center.

28 B. No victim may be ordered into protective custody without a court  
29 order based on allegations specified in Article 1432. The duration of the order

1 **is governed by Article 1432.**

2 Comments – 2017

3 (a) This Article does not substantially change the law. Nevertheless, there are  
4 three modifications: (1) This Article requires a physician's certificate in all cases,  
5 because even a tentative diagnosis required to justify a time-limited denial of liberty  
6 ought to be made by a physician, and not all coroners are physicians; (2) given the  
7 easy availability of oral instanter orders, it prohibits protective custody without a  
8 court order; and (3) it omits the coroner's office as an appropriate treatment facility.

9 (b) The calculation of the time periods is governed by Article 114. If the  
10 period is less than seven days, weekend days and legal holidays are excluded from  
11 the computation. If the period is seven days or more, weekend days and legal  
12 holidays are included in the calculation.

13 (c) An alternative method of hospitalization is provided in Chapter 9 of Title  
14 XIV of this Code. See Arts. 1434-1459, Judicial Commitment Procedure.

15 **Art. 725.6. Duties of the Department of Children and Family Services**

16 **A. The department shall be responsible for investigating reports of abuse**  
17 **or neglect where the abuser is believed to be a parent or caretaker, a person**  
18 **who maintains an interpersonal dating or engagement relationship with the**  
19 **parent or caretaker, or a person living in the same residence with the parent or**  
20 **caretaker as a spouse whether married or not.**

21 **B. Working with law enforcement, the department shall fully cooperate**  
22 **in investigating allegations of child exploitation.**

23 **C. The department shall maintain a current listing of licensed residential**  
24 **homes that specialize in the provision of services to exploited children. This**  
25 **listing shall be made available to courts, prosecutors, and other stakeholders**  
26 **involved in proceedings pertaining an exploited child.**

27 **D. The department shall cooperate with the prosecution of any**  
28 **perpetrator of child exploitation.**

29 **E. The department shall develop policies that reflect best practices. It**

1 shall consider all protocols developed by the Louisiana Human Trafficking  
2 Commission and assist in compiling data requested by the commission when  
3 available.

4 Art. 725.7. Victim confidentiality

5 In addition to the protections of Article 412, law enforcement officers,  
6 investigators, prosecutors, and service providers shall keep confidential all  
7 reports and records of exploitation, including the existence of such records. The  
8 identity, pictures, and images of the child victim and his family shall be  
9 confidential except to the extent that disclosure is:

10 (1) Essential for the purposes of investigation or prosecution.

11 (2) Required by court order.

12 (3) Necessary to ensure services or benefits.

13 Comments - 2017

14 The source of this Article is Section 13 of the Uniform Act on Prevention of  
15 and Remedies for Human Trafficking (2013). As its commentary notes: "Law  
16 enforcement officials are to keep the identity and pictures of victims and their  
17 families confidential both to protect them from traffickers and to lessen the impact  
18 of the adverse publicity."

19 Art. 725.8. Expungement of adjudications involving human trafficking victims

20 A. A motion to set aside an adjudication pursuant to the provisions of  
21 this Article, may be filed and served upon the district attorney at any time  
22 following an adjudication of delinquency and completion of the disposition  
23 relating thereto involving the offenses of prostitution pursuant to R.S. 14:82,  
24 prostitution by massage pursuant to R.S. 14:83.3 or 83.4, or crime against  
25 nature by solicitation pursuant to R.S. 14:89.2 when the child's participation in  
26 the offense was a result of having been a victim of human trafficking under R.S.  
27 14:46.2 or a victim of a severe form of trafficking under the federal Trafficking  
28 Victims Protection Act (22 U.S.C. 7101 et seq.).

29 B. The motion shall be in writing, shall describe the supporting evidence

1 with particularity, and shall include copies of any documents showing that the  
2 child is entitled to relief under this Article.

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

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

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

17 Section 2. R.S. 46:1403.1 is hereby amended and reenacted to read as follows:

18 §1403.1. Extended stay for completion of educational courses or other programs

19 ~~A. Notwithstanding any other provision of law to the contrary, including but~~  
20 ~~not limited to R.S. 46:1403(A)(1), a child housed at a residential home, may stay at~~  
21 ~~such home for a period not to exceed six months beyond his eighteenth birthday to~~  
22 ~~complete any educational course that he began at such facility, including but not~~  
23 ~~limited to a General Education Development course, and any other program offered~~  
24 ~~by the residential home.~~

25 ~~B. Notwithstanding Subsection A of this Section and any other provision of~~  
26 ~~law to the contrary, including but not limited to R.S. 46:1403(A)(1), a child housed~~  
27 ~~at a residential home that does not receive Title IV-E funding pursuant to 42 U.S.C.~~  
28 ~~670 et seq., may remain at such home until his twenty-first birthday to complete any~~  
29 ~~educational course that he began at such facility, including but not limited to a~~

1 General Education Development course, and any other program offered by the  
2 residential home.

3 Section 3. Children's Code Article 923 is hereby repealed.

4 Section 4. The Louisiana State Law Institute is hereby directed to prepare comments  
5 to the provisions of this Act.

6 Section 5. If the provisions of this Act become effective, they shall prevail over any  
7 conflicting provisions in the Act that originated as House Bill No. [LSLI Expungement Bill]  
8 of this 2017 Regular Session.

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The original instrument was prepared by Thomas L. Tyler. The following digest, which does not constitute a part of the legislative instrument, was prepared by Jerry G. Jones.

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	DIGEST	
SB 54 Engrossed	2017 Regular Session	Mizell

Present law (Ch.C. Art. 116) provides definitions.

Proposed law retains present law and expands the definition of "shelter care facility" to include temporary care for sexually exploited children.

Present law (Ch.C. Art. 606) provides the grounds for a child in need of care proceeding.

Present law (Ch.C. Art. 622(B)) provides for the placement of children pending a custody hearing.

Proposed law provides for shelter care facilities for children who are the victim of commercial sexual exploitation or human trafficking.

Present law (Ch.C. Art.725.1) provides definitions.

Proposed law revises definitions, including defining "department" from DPSC to DCFS, and defines "commercial sexual activity".

Present law (Ch.C. Art.725.2) provides safe houses for sexually exploited children.

Proposed law provides that the department shall identify and maintain a current listing of safe houses which are licensed residential homes that specialize in the provision of services to sexually exploited children, whether or not those facilities receive taxpayer funding. This listing shall be made available to courts, prosecutors, and other stakeholders involved in proceedings pertaining an exploited child.

Proposed law further provides that children lack the capacity to consent to commercial sexual activity and therefore are conclusively presumed to be exploited and shall not be prosecuted for crimes related to such activity.

Present law (Ch.C. Art.725.3) requires the department to develop protocols for delivery services to victims.

Proposed law adds that a child who is a victim of commercial sexual exploitation or human

trafficking is a child in need of care.

Proposed law (Ch.C. Art.725.4) provides that after the initial encounter or interview with a child reasonably believed to be a victim of commercial sexual exploitation of human trafficking, and the police officer or a probation officer of the court believe that the child's parent or caretaker is not culpable, the police officer or probation officer shall immediately notify the parents or guardian to come take physical custody of the child.

Proposed law further provides that if the officer believes that the child was abused or neglected by a parent or caretaker, a person who maintains an interpersonal dating or engagement relationship with the parent or caretaker, or a person living in the same residence with the parent or caretaker as a spouse whether married or not and immediate removal appears to be necessary for his protection, and protective custody is not necessary, the officer shall have the responsibility to promptly notify and release the child to the department. In all other situations, except when protective custody is necessary, the officer shall refer the child to the local child advocacy center or other community agency for services.

Proposed law (Ch.C. Art.725.5) authorizes the use of protective custody when an exploited child appears to be mentally ill or suffering from substance abuse and is in need of immediate treatment.

Proposed law (Ch.C. Art.725.6) provides that DCFS shall be responsible for investigating reports of abuse or neglect where the abuser is believed to be a parent or caretaker, a person who maintains an interpersonal dating or engagement relationship with the parent or caretaker, or a person living in the same residence with the parent or caretaker as a spouse whether married or not. Working with law enforcement, the department shall fully cooperate in investigating allegations of child exploitation.

Proposed law further provides that the department shall maintain a current listing of licensed residential homes that specialize in the provision of services to exploited children. This listing shall be made available to courts, prosecutors, and other stakeholders involved in proceedings pertaining an exploited child.

Proposed law (Ch.C. Art.725.7) requires all reports and records of exploitation to be kept confidential with a few exceptions.

Proposed law (Ch.C. Art.725.8) revises present law to provide procedures for the expungement of records when a child was exploited and then adjudicated for an offense arising from such exploitation. Proposed law further repeals present law (Ch.C. Art. 923) relative to such expungement procedures.

Present law (R.S. 46:1403.1) provides that notwithstanding any other provision of law to the contrary, a child housed at a residential home, may stay at such home for a period not to exceed six months beyond his eighteenth birthday to complete any educational course that he began at such facility, including but not limited to a General Education Development course, and any other program offered by the residential home. Present law further provides that a child housed at a residential home that does not receive Title IV-E funding pursuant to 42 U.S.C. 670 et seq., may remain at such home until his twenty-first birthday to complete any educational course that he began at such facility, including but not limited to a General Education Development course, and any other program offered by the residential home.

Proposed law revises present law to provide that a child housed at a residential home, may stay at such home until his twenty-first birthday to complete any educational course that he began at such facility, including but not limited to a General Education Development course, and any other program offered by the residential home.

Effective on August 1, 2017.

(Amends Ch.C. Arts. 116(25), 606(A)(intro para), 606(A)(7), 622(B)(intro para), 725.1 – 725.3, and R.S. 46:1403.1; adds Ch.C. Art. 622(B)(5), 725.4 – 725.8; repeals Ch.C. Art. 923)

Summary of Amendments Adopted by Senate

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

1. Makes substantial revision of definitions and requirements.
2. Adds revision to R.S. 46:1403.1.