RECALLED

April 26, 2016

**H. 5172**

Introduced by Reps. Fry and Henegan

S. Printed 4/26/16--H.

Read the first time April 12, 2016.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16‑3‑2110 SO AS TO ENACT THE “SAFE HARBOR FOR EXPLOITED MINORS ACT”, TO PROVIDE FOR PROTECTION OF THE IDENTITY OF MINOR VICTIMS OF TRAFFICKING IN PERSONS AND PROVIDE CERTAIN PROTECTIONS TO MINORS CHARGED WITH CERTAIN CRIMES INVOLVING PROSTITUTION AND COERCED INVOLVEMENT IN SUCH CRIMES, AMONG OTHER THINGS.

Whereas, the General Assembly finds that:

(1) minors under the age of eighteen residing in or visiting this State engaging in commercial sexual acts or sex trafficking should be presumed to be victims of a crime and enjoy the protection and resources of the State of South Carolina; and

(2) minors who qualify for the protection of this act should be protected from criminal and civil liability including immunity from prosecution. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “Safe Harbor for Exploited Minors Act”.

SECTION 2. Article 19, Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Section 16‑3‑2110. (A) In a prosecution involving a minor victim of trafficking in persons, an officer or employee of the court may not disclose the identity of the victim of trafficking in persons to the public. All records revealing the name of the victim of trafficking in persons are not open to public inspection or subject to disclosure pursuant to Chapter 4, Title 30, the Freedom of Information Act.

(B) A minor under the age of eighteen who is charged with a violation pursuant to Section 16‑15‑90, relating to prostitution and related offenses, may offer the defense during a pretrial hearing that he or she engaged in the conduct charged because he or she was compelled to do so by coercion or reasonable fear resulting from the use of or a threat to use unlawful force against his or her person or the person of another which a reasonable person in his or her situation would have been unable to resist. If the court finds by a preponderance of evidence that the minor was compelled, coerced, or threatened as provided in this subsection, the court shall dismiss the charges.

(C) A minor under the age of eighteen engaged in commercial sexual acts or sex trafficking is presumed to be doing so under reasonable fear of a threat or coercion.

(D) A minor under the age of eighteen who is charged with violating a trespassing, loitering, obstruction of highway, disorderly conduct, or simple possession of a controlled substance statute as a direct result of being a victim of sex trafficking, when the violation is his or her first offense, must be given first consideration for a pretrial diversionary program by the judicial authority with jurisdiction over the violation. If the minor successfully completes the diversionary program, the court shall order that the charges be expunged.

(E) No official determination or documentation is required to grant a motion under this section, but official documentation from a federal, state or local governmental agency indicating that the defendant was a victim at the time of the offense creates a presumption that the defendant’s participation in the offense was a direct result of being a victim.

(F) The court shall grant the motion if it finds that:

(1) the defendant was at the time of the offense under the age of eighteen and engaged in commercial sexual acts or sex trafficking; and

(2) there are no facts or circumstances that would undo the presumption of coercion.

(G) A law enforcement agency may use standard procedures for investigating prostitution involving minors under the age of eighteen, but timely must contact the Department of Social Services when a minor under the age of eighteen is being prostituted or trafficked, or is charged with prostitution or related offenses whereupon the charges would be vacated.

(H) The provisions of this section do not extend to a minor under the age of eighteen who induces, encourages, facilitates, or enables in anyway the sexual exploitation of another person.

(I) Residence of a victim of trafficking in persons in a shelter or other facility is voluntary, and a victim of trafficking in persons may decline to stay in a shelter or other facility.

(J) Admission to a shelter:

(1) must be made without regard to race, religion, ethnic background, sexual orientation, country of origin, or culture; and

(2) may not be conditioned on whether the victim of trafficking in persons is cooperating with a law enforcement agency in its attempts to prosecute persons pursuant to this article.”

SECTION 3. This act takes effect upon approval by the Governor.

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