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ATTORNEY GENERAL**Human Trafficking Survivor's Assistance Fund****Proposed New Rules: N.J.A.C. 13:77**

Authorized By: John J. Hoffman, Acting Attorney General.
 Authority: P.L. 2013, c. 51, specifically, N.J.S.A. 52:17B-238.
 Calendar Reference: See Summary below for explanation of
 exception to calendar requirement.
 Proposal Number: PRN 2014-201.

Submit written comments by January 16, 2015, to:

Tracy M. Thompson
 Assistant Attorney General
 Division of Criminal Justice
 P.O. Box 085
 Trenton, New Jersey 08625-0085
 Or electronically at humantrafficking@njdcj.org.

The agency proposal follows:

Summary

Effective July 1, 2013, P.L. 2013, c. 51 (the Act) enacted changes in the law concerning human trafficking and prostitution, including creation of the Human Trafficking Survivor's Assistance Fund (Fund), administered by the Attorney General pursuant to N.J.S.A. 52:17B-238. The law designated a separate offense of engaging in prostitution as a patron under N.J.S.A. 2C:34-1.b(1), and created additional penalties specific to that offense at N.J.S.A. 2C:34-1.2. Those penalties include assessment of a monetary penalty of \$500.00, to be collected by the court upon conviction and deposited in the Fund, and required attendance of the offender at a prostitution offender program approved by the Attorney General in consultation with the Commission on Human Trafficking established by the Act at N.J.S.A. 52:17B-237. Expenditures from the Fund shall be made by the Attorney General, in consultation with the Commission on Human Trafficking, in accordance with administrative rules promulgated by the Attorney General.

The Attorney General is proposing new rules for administration of the Fund, and procedures for approval of prostitution offender educational programs conducted by a county or local government entity, or by a non-profit or other private provider on behalf of a county or local government entity. The State is also required to establish a prostitution offender educational program. N.J.S.A. 2C:34-1.2 provides that \$200.00 of the \$500.00 penalty assessed against a convicted offender be distributed to the provider of the educational program for each offender who is ordered to attend a program by the sentencing court. Attendance is mandatory unless waived by the court on request of the prosecutor.

Subchapter 1 contains general provisions.

Proposed new N.J.A.C. 13:77-1.1 describes the purpose of the chapter.

Proposed new N.J.A.C. 13:77-1.2 contains definitions of terms used in the chapter.

Proposed new N.J.A.C. 13:77-1.3 contains standards for the distribution of money from the Fund for expenditures other than providing a prostitution offender program. The expenditures are those authorized by N.J.S.A. 52:17B-238 and 2C:13-12, including provision of services to victims of human trafficking; promotion of awareness of human trafficking; or development, maintenance, revision, and distribution of training course or other educational materials. A county prosecutor's office or other law enforcement agency may apply for reimbursement of expenditures for the stated purposes.

Proposed new N.J.A.C. 13:77-1.4 identifies recordkeeping requirements for entities that receive funding under proposed N.J.A.C. 13:77-1.3.

Subchapter 2 contains rules governing the approval and operation of prostitution offender programs.

Proposed new N.J.A.C. 13:77-2.1 describes the procedure for submitting an application for approval or re-approval as a provider.

Proposed new N.J.A.C. 13:77-2.2 states that an approval is valid for two years from the date of issuance. An application for approval or re-approval must be submitted at least 90 days prior to the commencement of instruction or expiration of approval as applicable.

Proposed new N.J.A.C. 13:77-2.3 describes the required content of instruction. An approved course must be at least four hours in length, at least three hours of which must be in-person instruction, and must include a written test.

Proposed new N.J.A.C. 13:77-2.4 requires the provider to establish procedures to verify the identity of the students enrolled in the course.

Proposed new N.J.A.C. 13:77-2.5 provides that the Attorney General or designee may inspect the records or facilities of any approved provider to verify compliance with the statute and rules in this chapter. The provider is also required to provide the Attorney General notice of every course to be offered. Courses are required to be held at fixed locations and at regular intervals, absent good cause. Providers must advise offenders of any change in program date, time, or location.

Proposed new N.J.A.C. 13:77-2.6 states the procedure for revocation or suspension of approval for non-compliance.

Proposed new N.J.A.C. 13:77-2.7 states the procedure for a provider to request a hearing in case of a revocation, suspension, or denial of an approval or re-approval by the Attorney General.

Proposed new N.J.A.C. 13:77-2.8 describes recordkeeping requirements for the Attorney General and providers.

Proposed new N.J.A.C. 13:77-2.9 provides that the Director of the Division of Criminal Justice or designee (Director) shall be notified by the prosecutor of every conviction for a violation of N.J.S.A. 2C:34-1.b(1). The Attorney General shall make the list of approved course providers public on the Department's web site, as well as other appropriate web sites, and shall distribute the list to the Administrative Office of the Courts.

Proposed new N.J.A.C. 13:77-2.10 requires the provider to notify the sentencing court and the Director within seven days of an offender's completion of the course. Failure of the offender to successfully complete the course will be considered non-compliance and will be reported to the court for appropriate action.

Proposed new N.J.A.C. 13:77-2.11 describes the process for payment of the penalty assessed by the court into the Fund and payment by the Attorney General to providers from the Fund.

Proposed new N.J.A.C. 13:77-2.12 requires providers to collect and supply such additional data as may be requested by the Director of the Division of Criminal Justice for use in evaluating, supporting, analyzing, or otherwise compiling information concerning the program.

The Attorney General has provided a 60-day comment period for this notice of proposal. Therefore, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules implement the requirements of P.L. 2013, c. 51, to establish an educational program to inform persons convicted of engaging in prostitution as a patron of effects and consequences of such criminal behavior. The program is intended to increase the offender's awareness of the causes of prostitution and its relationship to human trafficking; the health risks connected with prostitution, including the risk of transmittable diseases; the consequences of convictions for prostitution or human trafficking, including penalties for subsequent offenses; and the pervasiveness of human trafficking and the effects of human trafficking on its victims. The proposed new rules will have a positive social impact by deterring offenses concerning prostitution and human trafficking. To the extent that prosecutor's offices or other law enforcement agencies may seek reimbursement of costs related to human trafficking, services to victims may be enhanced.

Economic Impact

The proposed new rules will not have a direct economic impact on the public or on providers of approved courses. Funding for operation of approved courses is provided by statute through the Human Trafficking Survivor's Assistance Fund from penalties imposed by courts on offenders convicted of prostitution related offenses under N.J.S.A. Title 2C. Private entities that choose to provide the prostitution offender course may incur initial costs to develop the course. The statute specifies the amount to be paid to an approved course provider for each offender ordered to complete the program. Prosecutor's offices and other law enforcement agencies may apply for reimbursement of certain costs

associated with human trafficking. The rules do not require that any particular costs be incurred.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are governed by P.L. 2013, c. 51, and are not subject to any Federal requirements or standards.

Jobs Impact

The Board does not believe that the proposed new rules will result in the creation or loss of jobs in the State.

Agriculture Industry Impact

The proposed new rules will have no impact on the agriculture industry in the State.

Regulatory Flexibility Statement

The Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., requires the Attorney General to give a description of the types and an estimate of the number of small businesses to which the proposed new rules will apply. To the extent that a non-profit or other private entity, which may be considered a small business, may apply for approval of a prostitution offender program on behalf of a county or local government entity, the proposed new rules would impose reporting, recordkeeping and other compliance requirements. An organization that seeks to be approved as a course provider is required to submit an application containing the information specified in N.J.A.C. 13:77-2.1. An approved provider course of instruction must comply with the requirements of N.J.A.C. 13:77-2.3 and verify identity of students as required in N.J.A.C. 13:77-2.4. Approved providers are required to report notice of every course offered containing the information specified in N.J.A.C. 13:77-2.5. An approved provider is required to maintain course and offender participation records, including records of all instructors as specified in N.J.A.C. 13:77-2.8. An approved provider is required to notify the Director of the Division of Criminal Justice of the failure of any participant to complete the course or written test, or disruptive behavior. The approved provider is also required to notify the sentencing court and the Director of a student's successful completion of the course within seven days. Approved providers may also be required to report additional data for the purposes set forth in N.J.A.C. 13:77-2.12. Professional services would not be needed for compliance. The statute specifies the amount a provider shall be paid for each offender ordered to attend a prostitution offender program. Because the proposed new rules implement a statutory mandate that concerns public safety, differing standards based on business size are not appropriate.

Housing Affordability Impact Analysis

The proposed new rules will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the proposed new rules govern operation and administration of the Human Trafficking Survivor's Assistance Fund by the Attorney General.

Smart Growth Development Impact Analysis

The proposed new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed new rules govern operation and administration of the Human Trafficking Survivor's Assistance Fund by the Attorney General.

Full text of the proposed new rules follows:

CHAPTER 77

HUMAN TRAFFICKING SURVIVOR'S ASSISTANCE FUND

SUBCHAPTER 1. GENERAL PROVISIONS

13:77-1.1 Purpose

This chapter prescribes rules for administration of the Human Trafficking Survivor's Assistance Fund established by P.L. 2013, c. 51,

including the procedure and conditions for obtaining approval of a prostitution offender program course pursuant to N.J.S.A. 2C:34-1.2.

13:77-1.2 Definitions

The following words and phrases, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Approved course" means a prostitution offender program approved by the Attorney General pursuant to N.J.S.A. 2C:34-1.2 and this chapter.

"Approved provider" means a provider approved by the Attorney General pursuant to N.J.S.A. 2C:34-1.2 and this chapter to offer a prostitution offender program course.

"Director" means the Director of the Division of Criminal Justice in the Department of Law and Public Safety or designee.

"Human Trafficking Survivor's Assistance Fund" or "Fund" means the fund established by P.L. 2013, c. 51 (N.J.S.A. 52:17B-238), administered by the Attorney General.

"Offender" means a person convicted of an offense of engaging in prostitution as a patron pursuant to N.J.S.A. 2C:34-1.b(1) and ordered to attend a prostitution offender program.

"Prostitution offender program" means an instructional program on prostitution and human trafficking schemes established pursuant to N.J.S.A. 2C:34-1.2 by a county or local government entity, or by a nonprofit or other private provider on behalf of the county or local government entity. The term also includes an instructional program established by the State to be delivered through a nonprofit or other private provider.

"Subsequent offender" means an offender convicted of an offense of engaging in prostitution as a patron pursuant to N.J.S.A. 2C:34-1.b(1) more than once and ordered to attend a prostitution offender program.

13:77-1.3 Distribution of funds

(a) Expenditures of monies from the Human Trafficking Survivor's Assistance Fund (Fund) may be made by the Director upon approval of the Attorney General in consultation with the Commission on Human Trafficking for purposes other than the fee to providers of a prostitution offender course pursuant to N.J.A.C. 13:77-2, as follows:

1. Provision of services to victims of human trafficking;
2. Promotion of awareness of human trafficking; or
3. Development, maintenance, revision, and distribution of a training course and other educational materials.

(b) The amount of money available for expenditure each year is dependent upon the total amount collected and deposited into the Fund and designated by the Attorney General as available for distribution. Money in the Fund shall be allocated as required by N.J.S.A. 2C:34-1.2.

(c) Receipt of expenditures from the Fund by any provider of services to victims of human trafficking shall not be based or otherwise conditioned upon the previous, present, or future cooperation of the recipient regarding any law enforcement investigation or prosecution, or lack thereof.

(d) The Director shall make expenditures from the Fund to reimburse the costs of operation of educational or training programs in accordance with N.J.S.A. 2C:34-1.2 and N.J.A.C. 13:77-2 and pursuant to N.J.S.A. 2C:13-12.

(e) A county prosecutor's office or other law enforcement agency may apply to the Director for monies from the Fund to reimburse costs incurred under any of the categories in (a) above.

(f) A request for reimbursement of costs under (e) above shall describe:

1. The need for funding and the amount requested, including the availability of funds from other sources;
2. The duration of the need;
3. How the funding will be used; and
4. The indicators by which progress in achieving the purpose of the request will be measured.

(g) The Director shall determine the amount of reimbursement to be provided based on the request and the amount of monies available in the Fund.

13:77-1.4 Records

Any entity that receives funds pursuant to N.J.A.C. 13:77-1.3 shall maintain detailed records of all receipts and expenditures for a period of

not less than three years. Each county prosecutor or other law enforcement entity receiving such funds shall submit an annual report to the Director identifying separately all receipts, expenditures, and unexpended balances.

SUBCHAPTER 2. PROSTITUTION OFFENDER PROGRAM

13:77-2.1 Application procedure

(a) An application for approval or re-approval as a provider shall consist of, and be submitted in, the following manner:

1. A cover letter on the applicant's letterhead containing a request for approval and a description of the manner in which, and if known, the location(s) where the course will be provided, signed by the applicant or the applicant's chief executive officer, president, or individual of equal authority;

2. A written outline and full course text containing the minimum requirements set forth at N.J.A.C. 13:77-2.3, which may be compiled by the provider or a commercially available product, a sample examination, and a list of reference materials;

3. Any visual and/or audio learning aid(s) that is/are to be utilized while administering an approved course. This shall include, but not be limited to, instructional videos, slide presentations, and computer programs;

4. A list of the names of all instructors employed by the provider or retained by the provider to teach the course, including qualifications to teach the elements specified in N.J.A.C. 13:77-2.3(a). An approved provider shall notify the Attorney General, in writing, of any additions or deletions to the list;

5. Whether the provider will deliver the course in a language other than English, if necessary;

6. The minimum and maximum size of each class; and

7. If the provider is applying to operate a program on behalf of a county or local government, a written agreement with the government unit, including any resources or instructors to be provided by the county or municipality.

(b) The application shall be submitted to:

Office of the Attorney General
Division of Criminal Justice
Attn: Prostitution Offender Program c/o AAG Tracy Thompson
25 W. Market St.
P.O. Box 085
Trenton, NJ 08625-0085

13:77-2.2 Duration of approval

(a) The Attorney General's approval of a prostitution offender program course provider shall be documented by the issuance of a Letter of Approval to the provider.

(b) A Letter of Approval shall be valid for two years from the date of issuance, and shall expire on the last day of the month.

(c) An application for approval or re-approval of a course provider shall be submitted pursuant to N.J.A.C. 13:77-2.1 at least 90 days prior to commencement of instruction or expiration of the current approval, as applicable.

13:77-2.3 Course requirements

(a) Course materials and instruction shall include comprehensive information intended to increase the offender's awareness of:

1. The causes of prostitution and its relationship to human trafficking;

2. The health risks connected to prostitution, including the risk of transmittable diseases;

3. The consequences of convictions for prostitution or human trafficking, including penalties for subsequent convictions; and

4. The pervasiveness of human trafficking and the effects of human trafficking on its victims.

(b) An approved course shall be a minimum of four hours in length; at least three hours of which shall consist of in-person instruction. A 10-minute, non-cumulative break within each hour of instruction is permitted. The remaining one hour shall consist of written testing. The examination must be administered immediately following the instruction.

(c) The examination shall contain questions relating to pertinent information conveyed during the immediately preceding instructional

presentation. There shall be a minimum of 20 questions on the examination; at least four of which shall be from each topic noted in (a) above.

13:77-2.4 Verification of identity of offender

The approved provider shall establish procedures to verify the identity of the offenders enrolled in each course; including requiring presentation of two forms of identification, one of which must contain a photograph. Acceptable forms of identification include, but are not limited to, a valid passport, state-issued driver's license, student identification card.

13:77-2.5 Inspection of approved courses and providers

(a) The Attorney General or designee may inspect the records or facilities of any approved provider to verify compliance with this chapter. The Attorney General may require approved course providers, instructors, and applicants to attend periodic information sessions on human trafficking issues.

(b) Every approved course provider, by seeking and accepting approval to teach and/or administer an approved course, is deemed to have given consent, to the Attorney General or designee, to inspect any approved course without notice. Should the Attorney General or designee be denied entry to a course, the course shall be deemed null and void.

(c) Should any course be found to have been administered in a manner that is not in compliance with N.J.S.A. 2C:34-1.2 and this chapter, that course shall be deemed null and void.

(d) Approved course providers shall file, with the Attorney General in a manner deemed appropriate by the Attorney General, notice of every course to be offered. Courses shall be held at fixed locations, and occur at regularly scheduled intervals, absent good cause. The notice shall include, but not be limited to, the course location address, which cannot be a post office box; name of the business or organization on whose property the course will take place; telephone number or email address; and date, start, and finish time of the course.

(e) Any changes in course dates, locations, or start times after the initial filing, shall be reported immediately to the Director. Changes in course locations or schedules shall not be made within three days, not counting weekends or legal holidays, of the scheduled course date, without prior written approval of the Director.

(f) The course provider shall notify offenders of any changes to program date, time, or location.

(g) Any approved course provider who fails to cooperate with the Attorney General or designee inspection of a course, or any other provision of this section shall be subject to suspension or revocation pursuant to N.J.A.C. 13:77-2.6.

13:77-2.6 Intent to revoke provider approval/suspension/denial of approval; denial of re-approval

(a) The Attorney General may revoke, suspend, or refuse to approve or re-approve a provider for failure to comply with any requirements of this chapter, or for good cause, including, but not limited to, fraud or misrepresentation in an application for approval or re-approval, or for administering or instructing courses or allowing an instructor to administer or instruct a course in a manner inconsistent with this chapter, or failing to promptly notify the courts of an offender's attendance at a course.

(b) Any notice of intent to revoke or suspend a provider's approval, or deny a provider's application for approval or re-approval, shall be in writing from the Attorney General, stating the reason(s) and effective date thereof.

(c) Any provider whose approval was revoked, suspended, or denied by the Attorney General may seek future approval pursuant to N.J.A.C. 13:77-2.1.

13:77-2.7 Hearings

(a) The Attorney General shall afford the applicant or approved provider an opportunity for reconsideration and to submit additional information or, in the case of a revocation, suspension, or denial of approval or re-approval, an explanation of corrective action taken and procedures instituted to prevent a recurrence. A request for such reconsideration shall be made in writing to the Attorney General within 15 days from the receipt of notice provided under N.J.A.C. 13:77-2.5.

(b) If a request for reconsideration is timely received, the Attorney General shall set a date for submission of additional information and notify the parties of the time limit. The Attorney General or designee shall promptly review any additional information submitted and, upon verification of the information or corrective action taken, notify the provider of the Attorney General's final decision. The Attorney General or designee may conduct an informal fact finding conference to aid in making a determination.

(c) The provider may request a formal hearing by notifying the Attorney General in writing within 15 days of receipt of the Attorney General's determination. Upon receipt of such notice, the Attorney General shall consider the matter a contested case. All hearings shall be held in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

13:77-2.8 Records

(a) The Attorney General shall maintain administrative records of applications, approvals, and revocations of approvals for prostitution offender program providers and courses.

(b) Providers shall maintain and make available to the Attorney General or designee on request all course and offender participation records, including, but not limited to, records of all instructors who have taken part in approved course instruction, for a period of three years.

(c) The Attorney General shall make available to the public an annual list of approved course providers.

13:77-2.9 Notification

(a) The prosecutor of the sentencing court shall notify the Director of every conviction for violation of N.J.S.A. 2C:34-1.1.b(1) and offenders ordered to attend a prostitution offender program by the sentencing court.

(b) The Attorney General shall make public the list of approved course providers on the Department's public web site and such other public web sites as the Attorney General determines to be appropriate. The Attorney General shall also distribute the schedule of programs to the courts through the Administrative Office of the Courts.

13:77-2.10 Notification from approved provider of offender compliance

(a) A provider shall notify the Director of failure on the part of an offender to remain at the course for its entirety and to complete any written tests during the course, to engage in disruptive or threatening behavior during a course, or failure to provide relevant identifying information. Such failure shall be considered non-compliance and shall result in a referral by the Director or designee to the sentencing court for appropriate action.

(b) The Director shall mail notice of non-compliance to the offender's address on the record of conviction, or a more recent address if the offender advised the provider of a change of address, and to the sentencing court.

(c) An approved provider shall notify the sentencing court and the Director of an offender's completion of a course within seven days of completion.

13:77-2.11 Fees

(a) Penalties assessed against an offender or subsequent offender by the court at the time of conviction as provided for at N.J.S.A. 2C:34-1.2, or any amendment thereto, shall be payable to the court each time the person is convicted of a relevant solicitation offense and ordered to attend the prostitution offender program for deposit in the Human Trafficking Survivor's Assistance Fund.

(b) Approved course providers shall submit invoices to the Attorney General on a monthly basis requesting reimbursement for each offender who completed a prostitution offender program course with that provider. Payment will be made from the monies available in the Human Trafficking Survivor's Assistance Fund, pursuant to N.J.S.A. 52:17B-238, as provided in N.J.S.A. 2C:34-1.2.

13:77-2.12 Data collection

Course providers shall provide such additional data or information as may be requested by the Director for use in evaluating, supporting,

analyzing, or otherwise compiling information concerning the prostitution offender program.