

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 1880

INTRODUCER: Criminal Justice Committee and Senator Flores

SUBJECT: Human Trafficking

DATE: January 31, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The major features of the bill are described as follows:

- Authorizes the Office of Statewide Prosecution to investigate and prosecute any violation of the provisions of ch. 787, F.S., as well as any and all offenses related to a violation of the provisions of that chapter (including human trafficking offenses) if other requirements of s. 16.56, F.S., are also met.
- Requires a person employed by a massage establishment and any person performing massage therein to immediately present, upon the request of a Department of Health (DOH) investigator or a law enforcement officer, valid government identification while in the establishment, and provides criminal penalties for noncompliance.
- Adds various new human trafficking offenses to the list of offenses that qualify a person as a sexual predator or sexual offender for the purpose of registration and to various statutes that require agencies to provide information regarding sexual predators and sexual offenders.
- Repeals s. 787.05, F.S., which punishes unlawfully obtaining labor and services, and s. 796.045, F.S., which punishes sex trafficking.

- Creates a number of new human trafficking offenses which are first degree felonies, first degree felonies punishable by up to life imprisonment, or life felonies, and ranks those offenses.
- Authorizes seizure and forfeiture of any real or personal property that was used, was attempted to be used, or intended to be used in violation of s. 787.06, F.S., subject to the provisions of the Florida Contraband Forfeiture Act.
- Raises the degree of the offense of human smuggling from a first degree misdemeanor to a third degree felony, provides for repeat offender sanctions under s. 775.084, F.S., and ranks the offense.
- Modifies the elements of the current first degree felony offense of selling or buying minors into sex trafficking or prostitution so that the offense now punishes any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfers custody of such minor, with knowledge or in reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will engage in prostitution.
- Provides a statewide grand jury with subject matter jurisdiction over any violation of ch. 787, F.S., as well as any and all offense related to a violation of ch. 787, F.S.
- Provides that the Governor, the Attorney General, the Statewide Prosecutor, or any state attorney may authorize an application to a judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications by the Florida Department of Law Enforcement (FDLE) or any law enforcement agency having responsibility for the investigation of the offense as to which the application is made when such interception may provide or has provided evidence of the commission of a violation of s. 787.06, F.S.
- Adds two human trafficking offenses that only involve a victim who is a minor or a child under 15 years of age to the definitions of “child molestation” and “sexual offense” in s. 90.404, F.S., which provides, in part, that in a criminal case in which the defendant is charged with a crime involving child molestation, evidence of the defendant’s commission of other crimes, wrongs, or acts of child molestation is admissible and may be considered for its bearing on any matter to which it is relevant.

This bill substantially amends ss. 16.56, 90.404, 772.102, 775.21, 787.06, 787.07, 794.056, 796.035, 895.02, 905.34, 921.0022, 934.07, 938.085, 943.0435, 944.606, and 944.607, F.S.; and repeals ss. 787.05 and 796.045, F.S.

II. Present Situation:

Human Trafficking Statute

Section 787.06, F.S., punishes human trafficking, which is defined in the statute as transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport. The specific offense that is punished as a second degree felony involves knowingly:

- Engaging, or attempting to engage, in human trafficking with the intent or knowledge that the trafficked person will be subjected to forced labor or services; or
- Benefiting financially by receiving anything of value from participation in a venture that has subjected a person to forced labor or services.

The statute defines “forced labor or services” as labor or services obtained from a person by:

- Using or threatening to use physical force against that person or another person;
- Restraining, isolating, or confining or threatening to restrain, isolate, or confine that person or another person without lawful authority and against her or his will;
- Using lending or other credit methods to establish a debt by that person or another person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
- Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of that person or another person;
- Causing or threatening to cause financial harm to any person; or
- Fraud or coercion.

For a discussion of the provisions of ss. 16.56, 90.404, 772.102, 775.21, 787.05, 787.07, 794.056, 796.035, 796.045, 895.02, 905.34, 921.0022, 934.07, 938.085, 943.0435, 944.606, and 944.607, F.S., which, in addition to s. 787.06, F.S., are amended or repealed by the bill, see the “Effect of Proposed Changes” section of this analysis.

III. Effect of Proposed Changes:

Section 1 amends s. 16.56, F.S., relating to the Office of Statewide Prosecution, to authorize that office to investigate and prosecute any violation of the provisions of ch. 787, F.S., as well as any and all offenses related to a violation of provisions of ch. 787, F.S., if other requirements of the statute are also met (the offense must occur or have occurred in two or more judicial circuits as part of a related transaction, or be connected with an organized criminal conspiracy affecting two or more judicial circuits).

Section 2 creates s. 480.0535, F.S. The new statute states that, in order to provide the DOH and law enforcement agencies the means to more effectively identify, investigate, and arrest persons engaging in human trafficking, a person employed by a massage establishment and any person performing massage therein must immediately present, upon the request of a DOH investigator or a law enforcement officer, valid government identification while in the establishment. A valid government identification is any of the following:

- A valid, unexpired driver license issued by any state, territory, or district of the United States.
- A valid, unexpired identification card issued by any state, territory, or district of the United States.
- A valid, unexpired United States passport.
- A naturalization certificate issued by the United States Department of Homeland Security;
- A valid, unexpired alien registration receipt card (green card).
- A valid, unexpired employment authorization card issued by the United States Department of Homeland Security.

A person operating a massage establishment must:

- Immediately present, upon the request of a DOH investigator or a law enforcement officer:
 - Valid government identification while in the establishment.
 - A copy of the documentation previously specified for each employee and any person performing massage in the establishment.
- Ensure that each employee and any person performing massage in the massage establishment is able to immediately present, upon the request of a DOH investigator or a law enforcement officer, valid government identification while in the establishment.

A person who violates any of the previously described requirements commits:

- For a first violation, a second degree misdemeanor.
- For a second violation, a first degree misdemeanor.
- For a third or subsequent violation, a third degree felony.

Section 3 amends s. 775.21, F.S., relating to sexual predator registration. There are offense-based criteria for being designated as a sexual predator. One of the ways a person can qualify for sexual predator designation is when the person has a qualifying current offense and a qualifying prior offense. The statute provides that for a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a sexual predator and subject to registration and community notification requirements if the felony is any felony violation, or an attempt thereof, of a statute or statutory provision specified in s. 775.21, F.S., and the offender has previously been convicted or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of a statute or statutory provision specified in s. 775.21, F.S.

The bill adds the human trafficking offenses created by Section 5 of the bill and that involve commercial sexual activity to the list of qualifying current offenses and prior offenses:

Section 4 repeals s. 787.05, F.S., which punishes unlawfully obtaining labor and services.

Section 5 amends s. 787.06, F.S., the human trafficking statute, as follows:

- Amends legislative findings to indicate that victims of human trafficking also include citizens of the United States and those persons trafficked domestically within the borders of the United States.
- Takes the current definition of “forced labor services” and deletes reference to the term and substitutes the term “coercion,” then modifies the definition to indicate that “coercion” also applies to labor or services obtained from a person by:
 - Enticing or luring any person by fraud or deceit (currently, the statute only mentions fraud or coercion).
 - Providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03, F.S., to any person for the purpose of exploitation of that person.

- Defines the term “commercial sexual activity” as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography.
- Modifies the definition of the term “human trafficking” to mean transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person. (The current definition only includes transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport.)
- Defines the term “labor” as work of economic or financial value.
- Modifies the definition of the term “maintain” to include making possible the continued performance of labor service. (The current definition only speaks to securing continued performance of labor services.)
- Defines the term “obtain” as, in relation to labor or services, to secure performance thereof.
- Defines the term “services” as any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs.
- Defines the term “sexually explicit performance” as an act or show, whether public or private, live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.
- Defines the term “unauthorized alien” as an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. s. 1324a(h)(3). This term must be interpreted consistently with that section and any applicable federal rules or regulations.
- Defines the term “venture” as any group of two or more individuals associated in fact, whether or not a legal entity.
- Revises the elements and penalties of the current human trafficking offense found at s. 787.06(3), F.S. Currently, this subsection provides that it is a second degree felony to knowingly engage, or attempt to engage, in human trafficking with the intent or knowledge that the trafficked person will be subjected to forced labor or services; or to benefit financially by receiving anything of value from participation in a venture that has subjected a person to forced labor or services.

As revised, human trafficking consists of any of a number of specific acts of different felony degrees and offense severity level rankings. It is unlawful for a person to knowingly, or in reckless disregard of the facts, engage in, or attempt to engage in, or benefit financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking:

- Using coercion for labor or services. (First degree felony.)¹
- Using coercion for commercial sexual activity. (First degree felony.)
- Using coercion for labor or services of any individual who is an unauthorized alien. (First degree felony.)
- Using coercion for commercial sexual activity of any individual who is an unauthorized alien. (First degree felony.)
- Using coercion for labor or services by the transfer or transfer of any individual from outside this state to within the state. (First degree felony.)

¹ The maximum term of imprisonment for a first degree felony is generally 30 years in state prison, though the Legislature may provide by statute for a term of imprisonment not exceeding life imprisonment. Section 775.082., F.S.

- Using coercion for commercial activity by the transfer or transport of any individual from outside this state to within the state. (First degree felony.)
- For commercial sexual activity in which any child under the age of 18 is involved. (First degree felony punishable by imprisonment for a term of years not exceeding life.)
- For commercial sexual activity in which any child under the age of 15 is involved. (Life felony.)²
- Provides that in a prosecution for the human trafficking offense that only involves a victim who is a minor and in which the defendant had a reasonable opportunity to observe the person who was subject to human trafficking, the State need not prove the defendant knew that the person had not attained the age of 18 years. The same provision is created for the human trafficking offense that only involves a victim who is a child under the age of 15. Prosecutors do not need to prove the defendant knew that the person had not attained the age of 15 years.
- Provides that in a prosecution for any of the described human trafficking offenses a separate crime is committed and a separate punishment is authorized.
- Provides that any real property or personal property that was used, attempted to be used, or intended to be used in violation of any provision of s. 787.06, F.S., may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act.

Section 6 amends s. 787.07, F.S. This section punishes as a first degree misdemeanor³ the offense of human smuggling, which specifically involves a person transporting into this state an individual who the person knows, or should know, is illegally entering the United States from another country. The bill raises the degree of the offense of human smuggling from a first degree misdemeanor to a third degree felony⁴ and provides for repeat offender sanctions under s. 775.084, F.S., if applicable.

Section 7 amends s. 796.035, F.S., which provides that it is a first degree felony for any parent, legal guardian, or other person having custody or control of a minor to sell or otherwise transfer custody or control of such minor, or offer to sell or otherwise transfer custody of such minor, with knowledge that, as a consequence of the sale or transfer, the minor will engage in prostitution, perform naked for compensation, or otherwise participate in the trade of sex trafficking.

The bill modifies the elements of this offense so that the offense punishes any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfers custody of such minor, with knowledge or in reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will engage in prostitution. All references to sex trafficking are deleted.

Section 8 repeals s. 796.045, F.S., which punishes sex trafficking.

Section 9 amends s. 905.34, F.S. The statute currently lists a number of offenses over which a statewide grand jury has subject matter jurisdiction and may be impaneled subject to other

² The maximum term of imprisonment for a life felony is generally life imprisonment. Section 775.082, F.S.

³ The maximum term of imprisonment for a first degree misdemeanor is one year in jail. Section 775.082, F.S.

⁴ The maximum term of imprisonment for a third degree felony is 5 years in state prison. Section 775.082, F.S.

requirements of the statute (the offense must occur or have occurred in two or more judicial circuits as part of a related transaction, or be connected with an organized criminal conspiracy affecting two or more judicial circuits) The bill provides for subject matter jurisdiction over any violation of ch. 787, F.S., as well as any and all offenses related to a violation of ch. 787, F.S.

Section 10 amends s. 934.07, F.S. This statute, in part, provides that the Governor, the Attorney General, the Statewide Prosecutor, or any state attorney may authorize an application to a judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral or electronic communications by the FDLE or any law enforcement agency having responsibility for the investigation of the offense as to which the application is made when such interception may provide or has provided evidence of the commission of a specific violation. The bill adds to the list of violations any violation of s. 787.06, F.S.

Section 11 amends s. 943.0435, F.S., relating to sexual offender registration. A person classified as a sexual offender is subject to registration and community notification requirements. The term “sexual offender” is defined, in part, as applying to a person who meets criteria in any of several provisions of the statute, and has been released on or after October 1, 1997, from the sanction imposed for a conviction for an offense specified in the statute. One of these provisions applies to a person who has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the statutes or statutory provisions specified in s. 943.0435, F.S.

The term “sexual offender” is defined, in part, as also applying to a person who establishes or maintains a residence in this state and who is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the statutes or statutory provisions specified in s. 943.0435, F.S.

The bill adds the human trafficking offenses created by Section 5 of the bill and that involve commercial sexual activity to the list of specified offenses under the previously described criteria relevant to the definition of the term “sexual offender.”

Section 12 amends s. 944.606, F.S., which requires the Department of Corrections (DOC) to notify and provide specified information to certain persons of the release of a “sexual offender,” as defined in that statute. Under this definition, a person is a sexual offender if the person has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the statutes or statutory provisions specified in the definition. The bill adds the human trafficking offenses created by Section 5 of the bill and that involve commercial sexual activity to the list of specified offenses in the definition.

Section 13 amends s. 944.607, F.S., which, in part, requires the Department of Corrections to notify and provide specified information to the Florida Department of Law Enforcement and others regarding a “sexual offender,” which is defined, in part, as a person who is in the custody or control of, or under the supervision of, the DOC or in the custody of a private correctional facility, on or after October 1, 1997, as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in any statute or statutory provision specified in the definition. The bill adds the human trafficking offenses

created by Section 5 of the bill and that involve commercial sexual activity to the list of specified offenses in the definition.

Section 14 amends s. 90.04, F.S., relating to admissibility of character evidence. This statute provides, in part, that in a criminal case in which the defendant is charged with a crime involving child molestation, evidence of the defendant's commission of other crimes, wrongs, or acts of child molestation is admissible and may be considered for its bearing on any matter to which it is relevant. The statute defines the terms "child molestation" and "sexual offense" as conduct prohibited by any of a number of specified statutes or statutory provisions, including s. 796.045, F.S. The bill deletes reference to s. 796.045, F.S., a conforming change because of the repeal of s. 796.045, F.S., by Section 8 of the bill. The bill also modifies the definitions to reference the two human trafficking offenses that only involve a victim who is a minor or a child under 15 years of age.

Section 15 amends s. 772.102, F.S., the definitions section for ch. 772, F.S., the Civil Remedies for Criminal Practices Act. The civil remedies available under this chapter only apply to "criminal activity," as defined. "Criminal activity" is, in part, defined as committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any crime that is chargeable by indictment or information under any of a number of specified statutes or chapters. This definition is amended to delete reference to s. 796.045, F.S., which Section 8 of the bill repeals.

Section 16 amends s. 794.056, F.S., relating to the Rape Crises Program Trust Fund. This fund is created within the DOH to provide funds for rape crisis centers in this state. Trust fund moneys must be used exclusively for the purpose of providing services for victims of sexual assault. Funds credited to the trust fund consist of those funds collected as an additional court assessment in each case in which a defendant pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, an offense provided in any of a number of specified statutes or statutory provisions. The statute is amended to delete reference to s. 796.045, F.S., which Section 8 of the bill repeals.

Section 17 amends s. 895.02, F.S., the definitions section of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act,⁵ which punishes "racketeering activity." The term "racketeering activity" is, in part, defined as committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any crime that is chargeable by petition, indictment or information under any of a number of specified statutes, statutory provisions, or chapters. This definition is amended to delete reference to s. 796.045, F.S., which Section 8 of the bill repeals.

Section 18 amends s. 938.085, F.S., which provides, in part, that in addition to any sanction imposed when a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a violation of any of a number of specified statutes or statutory provisions, the court shall impose a surcharge of \$151, which is deposited in the Rape Crisis Program Trust Fund. The statute is amended to delete reference to s. 796.045, F.S., which Section 6 of the bill repeals.

⁵ Sections 895.01-895.06, F.S.

Section 19 amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to rank offenses as follows:

- Human smuggling: Level 4.
- Human trafficking using coercion for labor and services (first degree felony): Level 7.
- Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state (first degree felony): Level 7.
- Human trafficking using coercion for commercial sexual activity (first degree felony): Level 8.
- Human trafficking using coercion for labor and services of an unauthorized alien (first degree felony): Level 8.
- Human trafficking using coercion for commercial sexual activity by the transfer or transport of any individual from outside Florida to within the state (first degree felony): Level 8.
- Human trafficking using coercion for commercial sexual activity of an unauthorized alien (first degree felony): Level 9.
- Human trafficking for commercial sexual activity of a child under the age of 18 (first degree felony punishable by a term of imprisonment not exceeding life): Level 9.
- Selling or buying of minors into human trafficking (first degree felony): Level 9.
- Human trafficking for commercial sexual activity of a child under the age of 15 (life felony): Level 10.

Section 20 provides that the act takes effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates several new human trafficking felonies. All of these offenses are first degree felonies, first degree felonies punishable by imprisonment not exceeding life, or life felonies. The bill is identical to HB 7049. The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that HB 7049 (formerly PCB JDC 12-01) will have an indeterminate prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on January 31, 2012:

- Requires a person employed by a massage establishment and any person performing massage therein to immediately present, upon the request of a Department of Health investigator or a law enforcement officer, valid government identification while in the establishment, and provides criminal penalties for noncompliance.
- Adds various new human trafficking offenses to the list of offenses that qualify a person as a sexual predator or sexual offender for the purpose of registration and to various statutes that require agencies to provide information regarding sexual predators and sexual offenders.
- Creates a number of new human trafficking offenses which are first degree felonies, first degree felonies punishable by up to life imprisonment, or life felonies, and ranks those offenses.
- Authorizes seizure and forfeiture of any real or personal property that was used, was attempted to be used, or intended to be used in violation of s. 787.06, F.S., subject to the provisions of the Florida Contraband Forfeiture Act.
- Ranks human smuggling and new human trafficking offenses in the offense severity ranking chart of the Criminal Punishment Code.
- Modifies the elements of the current first degree felony offense of selling or buying minors into sex trafficking or prostitution so that the offense now punishes any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfers custody of such minor, with knowledge or in reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will engage in prostitution.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
