

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 989 Human Trafficking  
**SPONSOR(S):** Criminal Justice Subcommittee; Trujillo and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 768

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Thomas	Cunningham
2) Justice Appropriations Subcommittee	12 Y, 0 N, As CS	McAuliffe	Lloyd
3) Judiciary Committee			

### SUMMARY ANALYSIS

Section 787.06, F.S., Florida's human trafficking statute, defines human trafficking as the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person. The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking, using coercion for labor or services, or for commercial sexual activity. In addition to addressing the perpetrators of human trafficking, s. 787.06, F.S., addresses *victims* of human trafficking by providing legislative intent that "victims of trafficking be protected and assisted by this state and its agencies."

The bill amends a variety of statutes that currently provide protections to victims of sexual offenses, to extend those protections to victims of human trafficking. Specifically, the bill:

- Amends s. 39.01(67), F.S., to ensure that the definition of "sexual abuse of a child" used in dependency proceedings includes "allowing, encouraging, or forcing a child to participate in commercial sexual activity," as provided in the human trafficking statute;
- Amends s. 92.56, F.S., to protect court records involving human trafficking of a minor for labor or human trafficking for commercial sexual activity;
- Amends s. 960.065(2), F.S., to specify that compensation claims filed by persons engaged in an unlawful activity at the time of the crime upon which the claim is based are not eligible for an award, unless the victim was engaged in prostitution as a result of being a victim of human trafficking for commercial sexual activity; and
- Amends s. 960.199, F.S., specify that victims of human trafficking of a minor for labor or human trafficking for commercial sexual activity are eligible for victim relocation assistance.

The bill may result in more victims receiving victim compensation funds from the Department of Legal Affairs. To the extent these victims receive such funds, the bill will impact expenditures (see Fiscal Impact). The bill does not have a fiscal impact on local governments.

The bill is effective October 1, 2014.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, teenagers, men, and women. Victims are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.<sup>1</sup> The International Labor Organization (ILO), the United Nations agency charged with addressing labor standards, employment, and social protection issues, estimates that as many as 27 million adults and children are in forced labor, bonded labor, and commercial sexual servitude at any given time.<sup>2</sup> The federal government has estimated that the number of persons trafficked into the United States each year ranges from 14,500-17,500.<sup>3</sup>

It is estimated that as many as 300,000 American youth are currently at risk of becoming victims of commercial sexual exploitation.<sup>4</sup> The majority of American victims of commercial sexual exploitation tend to be runaway youth living on the streets, and generally come from homes where they have been abused, or from families that have abandoned them. These children often become involved in prostitution as a way to support themselves financially.<sup>5</sup> The average age at which girls first become victims of prostitution is 12-14; for boys and transgender youth it is 11-13.<sup>6</sup>

Third party or pimp-controlled commercial sexual exploitation of children is linked to escort and massage services, private dancing, drinking and photographic clubs, major sporting and recreational events, major cultural events, conventions, and tourist destinations. About one-fifth of these children become involved in nationally organized crime networks and are trafficked nationally. They are transported around the United States by a variety of means - cars, buses, vans, trucks or planes - and are often provided counterfeit identification to use in the event of arrest.

Survivors of human trafficking often face both criminalization and stigmatization. Trafficked persons are not always recognized or treated as victims by law enforcement and prosecutors. Despite being victims, individuals who are trafficked are often arrested and convicted of prostitution and other related offenses, and may plead guilty not understanding the consequences. Multiple arrests, incarceration, police violence, deportation, employment, and housing discrimination may result.<sup>7</sup>

##### 2012 Florida Legislation on Human Trafficking

Section 787.06, F.S., is Florida's human trafficking statute and defines "human trafficking" as the "transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person." The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking using coercion for labor or services,

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<sup>1</sup> U.S. Department of Health and Human Services, Administration for Children and Families, *About Human Trafficking*, available at <http://www.acf.hhs.gov/trafficking/about/index.html#> (last visited on March 6, 2014).

<sup>2</sup> See U.S. Department of State, *The 2013 Trafficking in Persons (TIP) Report*, June 2013, available at <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm> (last visited on March 6, 2014).

<sup>3</sup> Sonide Simon, *Human Trafficking and Florida Law Enforcement*, Florida Criminal Justice Executive Institute, pg. 2, March 2008, available at <http://www.fdle.state.fl.us/Content/getdoc/e77c75b7-e66b-40cd-ad6e-c7f21953b67a/Human-Trafficking.aspx> (last visited on March 6, 2014).

<sup>4</sup> *OJP Fact Sheet*, Office of Justice Programs, U.S. Department of Justice, December 2011, available at [http://ojp.gov/newsroom/factsheets/ojfs\\_humantrafficking.html](http://ojp.gov/newsroom/factsheets/ojfs_humantrafficking.html) (last visited on March 6, 2014).

<sup>5</sup> Richard J. Estes and Neil Alan Weiner, *Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico*, University of Pennsylvania, 2001, available at <http://www.sp2.upenn.edu/restes/CSEC.htm> (last visited March 6, 2012).

<sup>6</sup> *Id.*

<sup>7</sup> Melissa Broudo and Sienna Baskin, *Vacating Criminal Convictions For Trafficked Persons: A Legal Memorandum for Advocates and Legislators*. Urban Justice Center. The Sex Workers Project, April 3, 2012, available at <http://www.sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf> (last visited on March 6, 2014).

or for commercial sexual activity.<sup>8</sup> In 2012, Florida passed comprehensive legislation that updated and enhanced Florida's human trafficking statutes.<sup>9</sup> The 2012 law:

- Combined Florida's three existing human trafficking statutes into one statute making it more user-friendly for law enforcement;
- Increased penalties for the crime of human smuggling from a first-degree misdemeanor to a third degree felony;
- Provided that those convicted of human sex trafficking may be designated as sex offenders and sex predators;
- Provided that any property used for human trafficking is subject to forfeiture;
- Required massage establishments and employees to present valid photo identification upon request; and
- Gave jurisdiction for human trafficking offenses to the Statewide Prosecutor and the Statewide Grand Jury.

### **Effect of the Bill**

The bill amends a variety of statutes that currently provide protections to victims of sexual offenses, to extend those protections to victims of human trafficking. A description of these statutes and the protections they provide follows.

#### Dependency Proceedings

Chapter 39, F.S., establishes Florida child dependency process, and provides the process and procedures for the following:

- Reporting child abuse and neglect;
- Protective investigations;
- Taking children into custody and shelter hearings;
- Petition, arraignment, and adjudication of dependency;
- Disposition of the dependent child;
- Post-disposition change of custody;
- Case plans;
- Permanency;
- Judicial reviews; and
- Termination of parental rights.

Currently, the definition of "sexual abuse of a child," for purposes of finding a child to be dependent, includes numerous sexual acts, as well as "the sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution...." or participating in "the trade of sex trafficking as provided in s. 796.035."<sup>10</sup> Such abused children may be considered dependent<sup>11</sup> by the courts and delivered to the Department of Children and Families for shelter and services in or out of their caregiver's home.<sup>12</sup>

#### *Effect of the Bill*

The bill amends the definition of "sexual abuse of a child" in s. 39.01(67), F.S., to replace the reference to "participate in the trade of sex trafficking" with the phrase "participate in commercial sexual activity as provided in s. 787.06(3)(g) or (h)<sup>13</sup> or s. 796.035."<sup>14</sup>

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<sup>8</sup> Section 787.06(3), F.S.

<sup>9</sup> Chapter 2012-97, L.O.F. This legislation took effect July 1, 2012.

<sup>10</sup> Section 39.01(67), F.S.

<sup>11</sup> Section 39.01(15), F.S.

<sup>12</sup> See generally s. 39.013(2), F.S., which gives the circuit court exclusive original jurisdiction over a child found to be dependent.

<sup>13</sup> Section 787.06(3)(g) and (h), F.S., relate to human trafficking for commercial sexual activity of a child under the age of 18.

<sup>14</sup> Section 796.035, F.S., relates to the selling or buying of minors into prostitution.

### Confidentiality - Identity and Images of Victims of Sexual Offenses

Section 119.071(2)(h), F.S., provides, in part, that the following criminal intelligence information<sup>15</sup> or criminal investigative information<sup>16</sup> is confidential and exempt from s. 119.07(1), F.S., and Article I, Section 24(a), of the Florida Constitution:<sup>17</sup>

- Any information which may reveal the identity of a person who is a victim of sexual abuse;<sup>18</sup>
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense, regardless of whether the photograph, videotape, or image identifies the victim.<sup>19</sup>

Section 92.56(1)(a), F.S., provides that the confidential and exempt status of the above-described criminal intelligence information or criminal investigative information must be maintained in court records and in court proceedings.

Currently, a defendant charged with a crime described in ch. 794, F.S. (sexual battery), or ch. 800, F.S. (lewdness and indecent exposure), or with child abuse, aggravated child abuse, or sexual performance by a child as described in ch. 827, F.S., may request a court order allowing the defendant access to the confidential and exempt information in order to prepare his or her defense.<sup>20</sup> Additionally, trial testimony is permitted to be published or broadcast in such cases, so long as it does not include an identifying photograph, identifiable voice, or the name or address of the victim (unless consented to).<sup>21</sup>

The state may also use a pseudonym instead of a victim's name in cases relating to violations of

- Chapter 794, F.S. (sexual battery);
- Chapter 827, F.S. (child abuse, aggravated child abuse, or sexual performance by a child);
- Chapter 800, F.S. (lewdness and indecent exposure); or
- Any crime involving the production, possession, or promotion of child pornography.<sup>22</sup>

#### *Effect of the Bill*

The bill amends s. 92.56, F.S., to permit a defendant charged with human trafficking of a minor for labor or human trafficking for commercial sexual activity (regardless of victim age) to request a court order allowing the defendant access to the confidential and exempt information in order to prepare his or her defense. The bill also:

- Permits trial testimony to be published or broadcast in such cases, so long as it does not include an identifying photograph, identifiable voice, or the name or address of the victim; and
- Allows the state to use a pseudonym instead of a victim's name in such cases.

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<sup>15</sup> "Criminal intelligence information" is information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Section 119.011(3)(a), F.S.

<sup>16</sup> "Criminal investigative information" is information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Section 119.011(3)(b), F.S.

<sup>17</sup> Criminal intelligence information and criminal investigative information do not include: (1) time, date, location, and nature of a reported crime; (2) name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h), F.S.; (3) time, date, and location of the incident and of the arrest; (4) crime charged; (5) documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), F.S., and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1), F.S., until released at trial if it is found that the release of such information would be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness and impair the ability of a state attorney to locate or prosecute a codefendant; and (6) informations and indictments except as provided in s. 905.26, F.S. Section 119.011(3)(c), F.S.

<sup>18</sup> Section 119.071(2)(h)1.b., F.S.

<sup>19</sup> Section 119.071(2)(h)1.c., F.S.

<sup>20</sup> The confidential and exempt status of the records may not be used to prevent the disclosure of the victim's identity to the defendant; however, the defendant may not disclose the victim's identity to any person other than the defendant's attorney or any other person directly involved in the preparation of the defense. Section 92.56(2), F.S.

<sup>21</sup> Section 92.56(5), F.S.

<sup>22</sup> Section 92.56(3), F.S.

### Victim Compensation

The Florida Crimes Compensation Act (the Act),<sup>23</sup> authorizes the Florida Attorney General's Division of Victim Services to administer a compensation program to ensure financial assistance for victims of crime. Injured crime victims may be eligible for financial assistance for medical care, lost income, mental health services, funeral expenses and other out-of-pocket expenses directly related to the injury.<sup>24</sup> Currently, s. 906.065(2), F.S., provides that compensation claims filed by persons engaged in an unlawful activity at the time of the crime upon which the claim is based are not eligible for an award.

Section 960.199, F.S., provides relocation assistance to victims of sexual battery. The Department of Legal Affairs (DLA) administers the assistance program. Under the program, a victim of sexual battery<sup>25</sup> who needs relocation assistance and meets the statutory criteria<sup>26</sup> may receive:

- A one-time payment not exceeding \$1,500 on any one claim; and
- A lifetime maximum of \$3,000.

### *Effect of the Bill*

The bill amend s. 960.065(2), F.S., to specify that compensation claims filed by persons engaged in an unlawful activity at the time of the crime upon which the claim is based are not eligible for an award, unless the victim was engaged in prostitution as a result of being a victim of human trafficking for commercial sexual activity.

The bill amends s. 960.199, F.S., to specify that victims of human trafficking of a minor for labor or human trafficking for commercial sexual activity (regardless of victim age) are eligible for victim relocation assistance. The bill specifies that a victim's need for assistance must be certified by a rape crisis center or domestic violence center certified in Florida, or by the state attorney or statewide prosecutor having jurisdiction over the offense.

## B. SECTION DIRECTORY:

Section 1. Amends s. 39.01, F.S., relating to definitions.

Section 2. Amends s. 92.56, F.S., relating to judicial proceedings and court records involving sexual offenses.

Section 3. Amends s. 787.06, F.S., relating human trafficking.

Section 4. Amends s. 960.065, F.S., relating to eligibility for awards.

Section 5. Amends s. 960.199, F.S., relating to relocation assistance for victims of sexual battery.

Section 6. Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

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<sup>23</sup> Sections 960.01-960.28, F.S.

<sup>24</sup> <http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument> (last visited on March 7, 2014).

<sup>25</sup> As defined in s. 794.011, F.S.

<sup>26</sup> The statutory criteria for eligibility is:

- There must be proof that a sexual battery offense was committed.
- The sexual battery offense must be reported to the proper authorities.
- The victim's need for assistance must be certified by a certified rape crisis center in this state.
- The center certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan.
- The act of sexual battery must be committed in the victim's place of residence or in a location that would lead the victim to reasonably fear for his or her continued safety in the place of residence.

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill includes certain victims of human trafficking within those persons eligible for victim relocation assistance by the Department of Legal Affairs. In 2012, HB 1355 appropriated \$1.5 million in nonrecurring general revenue to the Department of Legal Affairs to assist in the relocation of victims of sexual assault. The funds were reappropriated in 2013, and to date, \$1.3 million of those funds remain. These funds, if reappropriated, would be the source of payment. If the funds are not reappropriated then the funding would be provided by the Crimes Compensation Trust Fund which could absorb those expenditures. The Crimes Compensation Trust Fund was appropriated \$30.3 million in Fiscal Year 2012-13 and had a balance of \$14.4 million at the end of that fiscal year.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not have any impact on local government revenues.

2. Expenditures:

The bill does not have any impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 10, 2014, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed the criminal penalty in the bill for a public employee to disclose information relating to a victim of human trafficking.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

On March 19, 2014, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides that a victim's need for assistance may also be certified by a state certified domestic violence center.

This analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.