

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/CS/SB 768

INTRODUCER: Appropriations Committee; Judiciary Committee; Criminal Justice Committee; and Senator Braynon

SUBJECT: Human Trafficking

DATE: April 24, 2014

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon	CJ	Fav/CS
2. Brown	Cibula	JU	Fav/CS
3. Clodfelter	Kynoch	AP	Fav/CS

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 768 revises laws on human trafficking. These changes:

- Include certain human trafficking offenses in s. 92.56, F.S., which provide protections from disclosure of information about victims of sexual offenses;
- Allow a defendant who is charged with the crime of human trafficking of a minor to access court records relating to the victim to prepare a defense, but prohibit the defendant from disclosing the victim's identity to persons not related to the preparation of the defense;
- Prohibit adult theaters from employing a person under 18 years of age and require adult theaters to obtain and keep records of proof of the age and identity of its employees and independent contractors;
- Eliminate the statute of limitations for human trafficking offenses under s. 787.06, F.S.;
- Clarify that the offense of human trafficking includes human trafficking that does and does not involve a venture;
- Separate existing offenses that do not differentiate the age of the victim into separate offenses for adult and child victims, remove the requirement to prove the use of coercion if the victim is a child, and create new offenses relating to mentally defective or mentally incapacitated persons and branding of victims;
- Provide legislative intent that adults who involve minors in prostitution prohibited under ch. 796, F.S., be prosecuted under other applicable laws of the state;
- Raise the offense classification for deriving support from the earnings of a prostitute, with additional increases in classification for subsequent offenses;

- Raise the offense classification for acts related to prostitution (but not engaging in prostitution) from a second degree misdemeanor to a third degree felony, with additional increases in classification for subsequent offenses;
- Allow victims of human trafficking to petition for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed under ch. 796, F.S., (prostitution) and ch. 847, F.S., (obscenity), regardless of the disposition of the arrest or of any charges;
- Provide that if a person is adjudicated not guilty by reason of insanity or found to be incompetent to stand trial for prostitution or obscenity, expunction of the criminal history record may not prevent the entry of the judgment or finding in state and national databases for use in determining eligibility to purchase or possess a firearm or carry a concealed firearm;
- Authorize compensation claims for victims of human trafficking; and
- Make victims of human trafficking eligible for victim relocation assistance.

The Criminal Justice Impact Conference determined that CS/HB 1017, which includes the same additions and changes relating to criminal laws as the bill, will require an undetermined number of additional prison beds. The Office of State Courts Administrator anticipates any increase in judicial workload can be absorbed within existing resources.

## II. Present Situation:

### Human Trafficking

Section 787.06, F.S., punishes “human trafficking,” which the statute defines as “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining<sup>1</sup> another person for the purpose of exploitation of that person.”<sup>2</sup>

The statute punishes a variety of acts relating to human trafficking.<sup>3</sup> Specifically, the statute provides any person who knowingly, or in reckless disregard of the facts, engages in, or attempts to engage in, or benefits financially by receiving anything of value from participating in a venture<sup>4</sup> involving human trafficking:

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<sup>1</sup> “Obtain” means, in relation to labor or services, to secure performance thereof. Section 787.06(2)(g), F.S.

<sup>2</sup> Section 787.06(2)(d), F.S.

<sup>3</sup> The statute was substantially amended by the Legislature in 2012 in HB 7049 (2012-97, L.O.F.). Among other things the legislation consolidated in s. 787.06, F.S., sex trafficking offenses that were previously contained in other statutes.

<sup>4</sup> “Venture” means any group of two or more individuals associated in fact, whether or not a legal entity. Section 787.06(2)(k), F.S.

- Using coercion<sup>5</sup> for labor<sup>6</sup> or services<sup>7</sup> commits a first degree felony (s. 787.06(3)(a), F.S.);<sup>8</sup>
- Using coercion for commercial sexual activity<sup>9</sup> commits a first degree felony (s. 787.06(3)(b), F.S.);
- Using coercion for labor or services of any individual who is an unauthorized alien commits a first degree felony (s. 787.06(3)(c), F.S.);
- Using coercion for commercial sexual activity of an unauthorized alien commits a first degree felony (s. 787.06(3)(d), F.S.);
- Using coercion for labor or services by transferring or transporting a person into the state commits a felony of the first degree (s. 787.06(3)(e), F.S.);
- Using coercion for commercial sexual activity by transferring or transporting a person into the state commits a first degree felony (s. 787.06(3)(f), F.S.);
- For commercial sexual activity in which any child under the age of 18 is involved commits a first degree felony, punishable by imprisonment of up to life imprisonment (s. 787.06(3)(g), F.S.); or
- For commercial sexual activity in which any child under the age of 15 is involved commits a life felony (s. 787.06(3)(h), F.S.).

Additionally, a parent, legal guardian, or other person having custody or control of a minor commits a first degree felony if he or she sells or otherwise transfers custody or control of the minor, or offers to sell or otherwise transfer custody of the minor, with knowledge or in reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will be subject to human trafficking (s. 787.06(4), F.S.).

### **Definition of “Sexual Abuse of a Child”**

Chapter 39, F.S., addresses proceedings relating to the protection of the welfare of children.<sup>10</sup> The definition of “sexual abuse of a child” in s. 39.01(67), F.S., includes the sexual exploitation

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<sup>5</sup> “Coercion” means: 1) using or threatening to use physical force against any person; 2) restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will; 3) using lending or other credit methods to establish a debt by any 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; 4) 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 any person; 5) causing or threatening to cause financial harm to any person; 6) enticing or luring any person by fraud or deceit; or 7) 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. Section 787.06(2)(a), F.S. “Financial harm” includes extortionate extension of credit, loan sharking as defined in s. 687.071, F.S., or employment contracts that violate the statute of frauds as provided in s. 725.01, F.S. Section 787.06(2)(c), F.S.

<sup>6</sup> “Labor” means work of economic or financial value. Section 787.06(2)(e), F.S.

<sup>7</sup> “Services” means 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. Section 787.06(2)(h), F.S.

<sup>8</sup> Generally, a first degree felony is punishable by up to 30 years in state prison, a fine of up to \$10,000, or imprisonment and a fine. Sections 775.082 and 775.083, F.S.

<sup>9</sup> “Commercial sexual activity” means any violation of ch. 796, F.S. (Prostitution), or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(b), F.S. “Sexually explicit performance” means an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest. Section 787.06(2)(i), F.S.

<sup>10</sup> Chapter 39, F.S., establishes a Florida child dependency process and provides the process and procedures for: reporting child abuse and neglect; protective investigations; taking children into custody and shelter hearings; petition, arraignment,

of a child, which includes the act of a child offering to engage in or engaging in prostitution, provided that the child is not under arrest or is not being prosecuted in a delinquency or criminal proceeding for a violation of any offense in ch. 796, F.S. (prostitution) based on such behavior; or allowing, encouraging, or forcing a child to:

- Solicit for or engage in prostitution;
- Engage in a sexual performance, as defined by ch. 827, F.S. (child abuse); or
- Participate in sex trafficking as provided in s. 796.035 (selling or buying of minors into prostitution).

Prior to legislation that passed in 2012,<sup>11</sup> s. 796.035, F.S., provided:

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 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, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

As a result of the 2012 legislation, the offense was modified and reference to the “trade of sex trafficking” was removed.<sup>12</sup> The statute now reads:

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 transfer 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 commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Consequently, as a result of the 2012 legislative changes, the reference to “trade of sex trafficking in s. 796.035” is not in current law.

### **Victim Identity Information in Judicial Proceedings and Records**

Section 92.56(1)(a), F.S., provides the confidential and exempt status of criminal intelligence information or criminal investigative information made confidential and exempt pursuant to s. 119.071(2)(h), F.S., must be maintained in court records pursuant to s. 119.0714(1)(h), F.S.,<sup>13</sup> and in court proceedings, including testimony from witnesses.

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and adjudication of dependency; disposition of the dependent child; post-disposition change of custody; case plans; permanency; judicial reviews; and termination of parental rights.

<sup>11</sup> Chapter 2012-97, L.O.F.

<sup>12</sup> Additionally, the 2012 legislation repealed s. 796.045, F.S., which punished sex trafficking. Sex trafficking is now addressed in s. 787.06, F.S.

<sup>13</sup> Section 119.0714(1), F.S., provides that nothing in ch. 119, F.S. (the public records chapter), shall be construed to exempt from s. 119.07(1), F.S. (inspection and copying), a public record that was made a part of a court file and that is not specifically closed by order of court, except for a record or information specified in that subsection. One of the exceptions is

Section 119.071(2)(h), F.S., provides the following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution:

- Any information, including the photograph, name, address, or other fact, which reveals the identity of a victim of child abuse as defined by ch. 827, F.S.<sup>14</sup>
- Any information which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution), ch. 800, F.S. (lewd acts), ch. 827, F.S. (child abuse), or ch. 847, F.S. (acts involving obscenity or materials harmful to a minor).
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under any of the previously referenced chapters, regardless of whether the photograph, videotape, or image identifies the victim.<sup>15</sup>

If a petition for access to confidential and exempt records is filed with the trial court having jurisdiction over the alleged offense, the court must maintain the confidential and exempt status of this information if the state or the victim demonstrates:

- The identity of the victim is not already known in the community;
- The victim has not voluntarily called public attention to the offense;
- The identity of the victim has not otherwise become a reasonable subject of public concern;
- The disclosure of the victim's identity would offend a reasonable person; and
- The disclosure of the victim's identity would:
  - Endanger the victim because the assailant has not been apprehended and is not otherwise known to the victim;
  - Endanger the victim because of the likelihood of retaliation, harassment, or intimidation;
  - Cause severe emotional or mental harm to the victim;
  - Make the victim unwilling to testify as a witness; or
  - Be inappropriate for other good cause shown.

A defendant charged with a crime described in ch. 794, F.S., or ch. 800, F.S., or with child abuse, aggravated child abuse, or sexual performance by a child as described in ch. 827, F.S., may apply to the trial court for an order of disclosure of information in court records held confidential and exempt pursuant to s. 119.0714(1)(h), F.S., or maintained as confidential and exempt pursuant to court order under s. 92.56, F.S.

The previously-described victim identification information may be released to the defendant or his or her attorney to prepare for defense. The confidential and exempt status of this information

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criminal intelligence information or criminal investigative information that is confidential and exempt as provided in s. 119.071(2)(h), F.S. Section 119.0714(1)(h), F.S.

<sup>14</sup> Section 827.03(1)(b), F.S., defines "child abuse" as: 1) intentional infliction of physical or mental injury upon a child; 2) an intentional act that could reasonably be expected to result in physical or mental injury to a child; or 3) active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

<sup>15</sup> Section 119.071(2)(h)2., F.S. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency: a) in the furtherance of its official duties and responsibilities; b) for print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered; and c) to another governmental agency in the furtherance of its official duties and responsibilities.

may not be construed to prevent 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. A willful and knowing disclosure of the identity of the victim to any other person by the defendant constitutes contempt.

The state may use a pseudonym instead of the victim's name to designate the victim of a crime described in ch. 794, F.S., or ch. 800, F.S., or of child abuse, aggravated child abuse, or sexual performance by a child as described in ch. 827, F.S., or any crime involving the production, possession, or promotion of child pornography as described in ch. 847, F.S., in all court records and records of court proceedings, both civil and criminal.

The protection of s. 92.56, F.S., may be waived by the victim of the alleged offense by filing with the court a written consent to the use or release of identifying information during court proceedings and in the records of court proceedings.

Section 92.56, F.S., does not prohibit publication or broadcast of the substance of trial testimony in a prosecution for an offense described in ch. 794, F.S., or ch. 800, F.S., or a crime of child abuse, aggravated child abuse, or sexual performance by a child, as described in ch. 827, F.S., but publication or broadcast may not include an identifying photograph, an identifiable voice, or the name or address of the victim, unless the victim has filed with the court written consent or the court has declared such records not confidential and exempt as provided for in s. 92.56 (1), F.S. A willful and knowing violation of s. 92.56, F.S., or a willful and knowing failure to obey any court order issued under the statute constitutes contempt.<sup>16</sup>

### **Victim Compensation and Relocation Assistance**

The Florida Crimes Compensation Act<sup>17</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>18</sup> Currently, s. 906.065(2), F.S., makes ineligible compensation claims filed by persons engaged in unlawful activity at the time of the crime.

Section 960.199, F.S., provides relocation assistance to victims of sexual battery. The Department of Legal Affairs (the Florida Attorney General's Office) administers the assistance program. Under this program, a victim of sexual battery<sup>19</sup> who needs relocation assistance may receive a one-time payment not exceeding \$1,500 on any one claim and a lifetime maximum of \$3,000 if all of the following criteria are met:

- Proof that a sexual battery offense was committed.
- The sexual battery offense must be reported to the proper authorities.

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<sup>16</sup> Section 92.56(6), F.S.

<sup>17</sup> Sections 960.01-960.28, F.S.

<sup>18</sup> Attorney General, *Crime Victims' Services*.

<http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument> (last visited on April 3, 2014).

<sup>19</sup> See s. 794.011, F.S. (sexual battery).

- The victim’s need for assistance as certified by a certified rape crisis center in this state.
- The center must certify the victim is cooperating with law enforcement officials, if applicable, and document 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 his or her continued safety.<sup>20</sup>

### **Criminal Punishment Code/Sentence Point Multipliers**

The Criminal Punishment Code (Code)<sup>21</sup> is Florida’s framework or mechanism for determining permissible sentencing ranges for noncapital felonies. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).<sup>22</sup> Points are assigned and accrued based upon the level ranking (sentence points escalate as the level escalates) assigned to the primary offense and, if applicable, additional offenses, prior offenses, prior capital felonies, victim injury, legal status violations, community sanction violations, possession of a firearm, and prior serious felonies.<sup>23</sup>

If total sentence points are less than or equal to 44 points, the lowest permissible sentence is any nonstate prison sanction (e.g., probation). Generally, the sentencing range is a nonprison sanction up to the maximum penalty for the felony degree of the primary offense.<sup>24</sup> If total sentence points are greater than 44 points, 28 points are subtracted from that number. This total is then multiplied by 0.75 to determine the lowest permissible sentence in prison months.<sup>25</sup> For example, if an offender’s primary offense is a second degree felony and his or her total sentence points are 80 points, 28 points are subtracted from 80, which equals 52 points. The 52 points are then multiplied by 0.75, which equals 39, or 39 months in prison. In this example, absent mitigation,<sup>26</sup> the sentencing range is 39 months in state prison up to 15 years in state prison, the maximum penalty for a second degree felony.

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<sup>20</sup> Section 960.199(2), F.S.

<sup>21</sup> Sections 921.002-921.0027, F.S.

<sup>22</sup> A noncapital felony is ranked in one of two ways. The felony may be assigned a ranking by its placement in a specific ranking level in the Code’s offense severity ranking chart. See s. 921.0022, F.S. However, if the offense is not ranked in the chart, it is assigned a ranking based on its felony degree as provided in s. 921.0023, F.S.

<sup>23</sup> See s. 921.0024, F.S. Further discussion of Code sentencing is based on provisions of this statute, unless otherwise noted.

<sup>24</sup> The maximum penalty for the felony degree is generally prescribed in s. 775.082, F.S. An exception is when the scored lowest permissible sentence exceeds the maximum penalty prescribed in s. 775.082, F.S. In this case, the scored lowest permissible sentence for the primary offense becomes both the minimum and maximum penalty for the primary offense.

<sup>25</sup> Mandatory minimum terms are an exception to general sentencing under the Code. “If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence. If the lowest permissible sentence exceeds the mandatory sentence, the requirements of the ... Code and any mandatory minimum penalties apply.” Rule 3.704(26) (“The Criminal Punishment Code”), Florida Rules of Criminal Procedure.

<sup>26</sup> The Code includes a list of ‘mitigating’ factors. See s. 921.0026, F.S. If a mitigating factor is found by the sentencing court, the court may decrease an offender’s sentence below the lowest permissible sentence (a “downward departure”). A mandatory minimum term is not subject to these mitigating factors. See *State v. Vanderhoff*, 14 So. 3d 1185 (Fla. 5th DCA 2009).

### III. Effect of Proposed Changes:

This bill revises the law on human trafficking. These changes:

- Provide protections for disclosure of court record information that identifies a victim of human trafficking of a minor for labor or services or human trafficking for commercial sexual activity;
- Clarify the offense of human trafficking includes human trafficking that does and does not involve a venture;
- Prohibit a public employee or officer having access to specified personal information regarding a victim of human trafficking of a minor for labor or services or human trafficking for commercial sexual activity from willfully and knowingly disclosing that information to an unauthorized person or entity;
- Authorize a compensation claim filed by a person engaged in prostitution as a result of being a victim of human trafficking for commercial sexual activity; and
- Provide that a victim of human trafficking of a minor for labor or services or human trafficking for commercial sexual activity is eligible for victim relocation assistance.

**Section 1** amends s. 92.56, F.S. (judicial proceedings and court records involving sexual offenses), to specify in the title of the statute that the statute also includes human trafficking offenses and to add the following offenses to s. 92.56(2), (3), and (5), F.S., that involve human trafficking:

- For labor or services under the age of 18;
- Using coercion for commercial sexual activity of an adult;
- Using coercion for commercial sexual activity of an adult who is an unauthorized alien;
- For commercial sexual activity by the transfer or transport of any child under the age of 18 from outside this state to within the state;
- For commercial sexual activity who does so by the transfer or transport of an adult from outside this state to within the state; and
- For commercial sexual activity in which any child under the age of 18, or in which any person who is mentally defective or mentally incapacitated, is involved.

The effects of this change are:

- A defendant charged with any of these specified human trafficking offenses may apply to the trial court for an order of disclosure of information in court records held confidential and exempt pursuant to s. 119.0714(1)(h), F.S., or maintained as confidential and exempt pursuant to court order, in order for the defendant to prepare for his or her defense.
- The state may use a pseudonym instead of the victim's name to designate the victim of any of these specified human trafficking offenses in all court records and records of court proceedings, both civil and criminal.
- Section 92.56, F.S., does not prohibit the publication or broadcast of the substance of trial testimony in a prosecution for any of these human trafficking offenses.

**Section 2** amends s. 450.021, F.S., to prohibit a person under 18 years of age from working in an adult theater regardless of whether such person's disabilities of nonage have been removed by marriage or otherwise.



**Section 3** amends s. 450.045, F.S., to require an adult theater to obtain proof of the identity and age of its employees and independent contractors prior to employment or the provision of services. The adult theater must also verify the validity of the identification documents used to provide such proof. The adult theater is required to maintain a photocopy of the person's government-issued photo identification card, as well as proof of the verification of the validity of the identification document. These records must be maintained at the location where the employee or independent contractor works or provides services to the adult theater for at least three years. This section provides the Department of Business and Professional Regulation and its agents the authority to enter and inspect at any time a place or establishment and to have access to age verification documents kept on file by the adult theater.

**Section 4** amends s. 775.082, F.S., to provide that for a life felony committed on or after October 1, 2014, which is a violation of s. 787.06(3)(g), F.S., (commercial sex trafficking in which a child under 18 years of age is involved), the punishment be a term of life imprisonment.

**Section 5** amends s. 775.15, F.S., to provide that there is no time limitation for the criminal prosecution of a violation of s. 787.06, F.S., relating to human trafficking offenses.

**Section 6** amends s. 787.06(3), F.S., which includes a number of first degree felony human trafficking offenses when coercion is used. Currently, the subsection provides that it is unlawful for any 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 involving any of a number of specified acts. The bill clarifies that the section applies to persons who engage or attempt to engage in human trafficking whether or not the activity involve a venture.

In addition to clarifying that participation in human trafficking is not a prerequisite, the bill revises and adds to the list of prohibited offenses. Currently, the offenses do not differentiate between adult and child victims and include the use of coercion as an element of the offense. The bill creates separate offenses for adult and child victims and removes the requirement to prove the use of coercion if the victim is a child. The amended offense list includes the following first degree felonies for human trafficking that is engaged in:

- For labor or services of any child under 18 years of age.
- Using coercion for labor or services of an adult.
- Using coercion for commercial sexual activity of an adult.
- For labor or services of any child under 18 years of age who is an unauthorized alien.
- Using coercion for labor or services of an adult who is an unauthorized alien.
- Using coercion for commercial activity of an adult who is an unauthorized alien.
- For labor or services by the transfer or transport of any child under the 18 years of age from outside this state to within the state.
- Using coercion for labor or services by the transfer or transport of any adult from outside this state to within the state.
- For commercial sexual activity done by transfer or transport of any child under 18 years of age from outside this state to within this state (first degree felony punishable by life).
- Using coercion for commercial sexual activity done by transfer or transport of any adult from outside this state to within this state.

The bill consolidates the offenses of commercial sexual activity involving any child who is under 18 years of age (currently a first degree felony punishable by life) and commercial sexual activity involving any child who is under 15 years of age (currently a life felony) into a single life felony offense of commercial sexual activity involving any child who is under 18 years of age. In addition, the bill expands potential victims to include persons who are mentally defective or mentally incapacitated. The bill specifies that this life felony must be punished by imprisonment for life.

The offense of sale or transfer of a minor by a parent, legal guardian, or other person who has custody or control of a minor with knowledge or reckless disregard that the minor will be subject to human trafficking is currently a first degree felony punishable by life imprisonment. The bill raises it to a life felony.

The bill creates a new second degree felony offense for permanently branding or directing the branding of a person who is a victim of human trafficking. The term “permanently branded” is defined as “a mark on the individual’s body that, if it can be removed or repaired at all, can only be removed or repaired by surgical means, laser treatment, or other medical procedure.”

The bill creates a new provision that the defendant’s ignorance of the victim’s age, the victim’s misrepresentation of his or her age, or the defendant’s bona fide belief of the victim’s age cannot be raised as a defense in a prosecution for human trafficking.

**Section 7** creates s. 796.001, F.S., to provide legislative intent that adults who involve minors in behaviors prohibited under ch. 796, F.S. (prostitution) be prosecuted under other laws of the state, such as, but not limited to, s. 787.06, F.S., ch. 794, F.S., ch. 800, F.S., s. 810.145, F.S., ch. 827, F.S., and ch. 847, F.S.

**Section 8** repeals s. 796.03, F.S., s. 796.035, F.S., and s. 796.036, F.S., which relate to various prostitution related offenses.

**Section 9** amends s. 706.05, F.S., which currently provides that it is a third degree felony to knowingly derive support from the earnings of a prostitute. The bill makes the crime a second degree felony for a first offense, elevates second and subsequent offenses to first degree felonies, and provides a mandatory minimum term of 10 years of imprisonment for third and subsequent offenses.

**Section 10** amends s. 796.07, F.S., which prohibits and provides penalties for prostitution and related acts. Currently, each of the offenses in s. 796.07, F.S., is a second degree misdemeanor for a first violation, a first degree misdemeanor for a second violation, and a third degree misdemeanor for a third or subsequent violation. The bill maintains this scheme for persons who offer to commit, commit, or engage in prostitution (s. 796.07(2)(e), F.S.) and persons who reside, enter, or remain in a place, structure or building, or enter or remain in a conveyance, for the purpose of prostitution (s. 797.06(2)(g), F.S.). Each of the other acts related to prostitution (ss. 796.07 (a), (b), (c), (d), (f), (h), and (i), F.S.) is raised to a third degree felony for a first offense, a second degree felony for a second offense, and a first degree felony for a third or

subsequent offense. These felony offenses generally apply to persons who commit acts that facilitate prostitution or who purchase the services of a person engaged in prostitution.

In addition to increasing the offense classification for certain acts related to prostitution, the bill requires assessment of a criminal penalty of \$5000 for the offenses that are designated as felonies if the offense results in any judicial disposition other than acquittal or dismissal. Currently, the statute requires assessment of a \$5000 civil penalty for all offenses under s. 796.07, F.S., that result in any judicial disposition other than acquittal or dismissal.

**Section 11** amends s. 921.0022, F.S., to make revisions to the Criminal Punishment Code Offense Severity Ranking Chart that are consistent with changes made in the bill.

Sections 796.03 and 796.035, F.S. are removed because they are repealed in Section 8 of the bill. The human trafficking offenses in s. 787.06(3), F.S., that are created or renumbered in Section 6 of the bill are added or renumbered in the Severity Ranking Chart. Each offense that involves a child victim is ranked one level higher than the corresponding offense in which the victim is an adult.

**Section 12** amends s. 943.0583, F.S., to allow victims of human trafficking to petition for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed under ch. 796, F.S., and ch. 847, F.S., regardless of the disposition of the arrest or of any charges.

This section also provides that a person adjudicated not guilty by reason of insanity or found to be incompetent to stand trial for any such charge, the expunction of the criminal history record may not prevent the entry of the judgment or finding in state and national databases for use in determination of eligibility to purchase or possess a firearm or carry a concealed firearm. The expunction shall not prevent any governmental agency authorized by state or federal law to determine eligibility to purchase or possess a firearm or carry a concealed firearm from accessing or using the record of the judgment or finding in the court of its official duties.

**Section 13** amends s. 960.065(2), F.S., which 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 under the Florida Crimes Compensation Act. The bill provides an exception for a victim engaged in prostitution as a result of being a victim of human trafficking:

- Using coercion for commercial sexual activity of an adult;
- Using coercion for commercial sexual activity of an adult who is an unauthorized alien;
- For commercial sexual activity who does so by the transfer or transport of any child under the age of 18 from outside this state to within the state;
- Using coercion for commercial sexual activity who does so by the transfer or transport of an individual from outside this state to within the state; or
- For commercial sexual activity in which a child under the age of 18 or any person who is mentally defective or mentally incapacitated is involved.

**Section 14** amends s. 960.199, F.S., which provides for relocation assistance to victims of sexual battery. The bill extends relocation assistance to victims of human trafficking.

The statute currently provides the need for assistance by a victim of sexual battery must be certified by a certified rape center in this state.

Specific to human trafficking victims:

- The bill provides in addition to a certified rape crisis center, a state-certified domestic violence center may also certify the need for relocation assistance.
- The state attorney or statewide prosecutor must approve the certification of need made by either the rape center or the domestic violence center.

Florida law provides that the center's certification must assert the victim is cooperating with law enforcement officials, if applicable, and document the victim has developed a safety plan.

**Sections 15 – 30** amend ss. 39.01, 90.404, 772.102, 775.0877, 775.21, 787.01, 787.02, 794.056, 856.022, 895.02, 938.085, 938.10, 943.0435, 943.0585, 943.059, 944.606, 944.607, 948.013, and 948.32, F.S., to make technical changes. Most of the changes delete references to statutes that are repealed by the bill.

The bill takes effect July 1, 2014.

#### **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 Criminal Justice Impact Conference (CJIC) considered CS/HB 1017, which includes the same additions and changes relating to criminal laws as CS/CS/CS/SB 768. The CJIC determined that CS/HB 1017 would have a positive indeterminate impact on prison beds, meaning that it would require more prison beds but the number could not be determined.

The majority of the sentence increases would lengthen current felony sentences and thus be felt several years from the effective date. However, because the amendment increases the offense classification of many first time prostitution-related offenses from misdemeanors to felonies, it is possible that the some impact will be felt in the first year of the bill. In its analysis of the impact of the bill on the court system, the Office of the State Courts Administrator (OSCA) states any judicial or court workload impact is likely to be absorbed within existing resources. The OSCA provides the following additional comments regarding the bill's impact:

The extent to which judicial workload would be affected by this bill depends upon the number of human trafficking cases that would be filed as a result of this bill, which is unknown. The more human trafficking cases that are filed as a result of this bill, the more judicial workload may be increased due to prosecution of the cases and required decisions on applications for disclosure of information by defendants.<sup>27</sup>

The Department of Legal Affairs has not provided an analysis of the bill's impact. The bill may result in more victims receiving victim compensation funds from the department.

#### **VI. Technical Deficiencies:**

The bill is a combination of CS/CS/SB 768 and CS/SB 1440. CS/SB 1440 made substantial amendments to s. 787.06(3), F.S., that were not in CS/CS/SB 768. As a result, it appears that portions of the bill that were in CS/CS/SB 768 and that referred to paragraphs in s. 787.06(3), F.S., may no longer reference the offense that is intended.

#### **VII. Related Issues:**

None.

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 39.01, 92.56, 787.06, 960.065, and 960.199.

#### **IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

##### **CS/CS/CS by Appropriations on April 22, 2014:**

The Committee Substitute:

- Removes a change to the definition of “sexual abuse of a child”.

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<sup>27</sup> 2014 Judicial Impact Statement (CS/SB 768) (April 4, 2014), Office of the State Courts Administrator (on file with the Senate Committee on Criminal Justice).

- Prohibits adult theaters from employing a person under 18 years of age and requires adult theaters to obtain and keep records of proof of the age and identity of its employees and independent contractors.
- Eliminates the statute of limitations for human trafficking offenses under s. 787.06, F.S.
- Separates existing offenses in s. 787.06(3), F.S., that do not differentiate the age of the victim into separate offenses for adult and child victims, removes the requirement to prove the use of coercion if the victim is a child, and creates new offenses relating to mentally defective or mentally incapacitated persons and branding of victims.
- Provides legislative intent that adults who involve minors in prostitution prohibited under ch. 796, F.S., be prosecuted under other applicable laws of the state.
- Raises the offense classification for deriving support from the earnings of a prostitute, with additional increases in classification for subsequent offenses.
- Raises the offense classification for acts related to prostitution (but not engaging in prostitution) from a second degree misdemeanor to a third degree felony, with additional increases in classification for subsequent offenses.
- Allows victims of human trafficking to petition for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed under ch. 796, F.S., (prostitution) and ch. 847, F.S., (obscenity), regardless of the disposition of the arrest or of any charges.
- Provided that if a person is adjudicated not guilty by reason of insanity or found to be incompetent to stand trial for prostitution or obscenity, expunction of the criminal history record may not prevent the entry of the judgment or finding in state and national databases for use in determining eligibility to purchase or possess a firearm or carry a concealed firearm.

**CS/CS by Judiciary on April 8, 2014:**

The CS revises provisions on relocation assistance available to victims:

- The state attorney or statewide prosecutor will only need to approve certifications of need for human trafficking victims, not all victims of sexual battery.
- A state-certified domestic violence center may also certify a victim of human trafficking's need for relocation assistance.

**CS by Criminal Justice on March 24, 2014:**

Removes a provision from the bill that provides a penalty for a public employee/officer who willfully and knowingly discloses certain information regarding a human trafficking victim to a person not authorized to have access to that information.

**B. Amendments:**

None.