

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 465 Human Trafficking

SPONSOR(S): Judiciary Committee; Criminal Justice Subcommittee; Spano; Kerner and others

TIED BILLS: HB 467, HB 469 **IDEN./SIM. BILLS:** SB 1106

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Aziz	Cunningham
2) Justice Appropriations Subcommittee	11 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee	18 Y, 0 N, As CS	Aziz	Havlicak

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. In recent years, the Legislature has overhauled Florida's human trafficking laws to increase penalties for human trafficking and to make human trafficking prosecutions easier. The greatest driver of human trafficking in Florida is prostitution.

Currently, the penalty for soliciting another for prostitution is a second degree misdemeanor for the first offense, a first degree misdemeanor for the second offense, and a third degree felony for a third or subsequent offense. Anyone who is convicted, pleads guilty or pleads nolo contendere for solicitation for prostitution is subject to a \$5,000 fine.

The bill increases the criminal penalties for soliciting, inducing, enticing, or procuring another to commit prostitution. The penalties are increased as follows:

- First offense is a first degree misdemeanor;
- Second offense is a third degree felony; and
- Third, or subsequent, offense is a second degree felony.

The bill requires a judge to sentence a person convicted of solicitation to 10 days in jail if it is their second or subsequent conviction for solicitation.

The bill also requires the court to order a person convicted of solicitation to perform 100 hours of community service and complete an educational program about the negative effects of prostitution and human trafficking. The bill also authorizes a judge to impound or immobilize the car of a person convicted of solicitation for up to 60 days.

The bill authorizes any court in the circuit in which a victim of human trafficking was arrested to grant a human trafficking expunction, as long as the court has jurisdiction over the class of offense or offenses sought to be expunged. The bill allows an advocate to be present with a victim of human trafficking during any human trafficking expunction court proceeding.

The Criminal Justice Impact Conference (CJIC) met February 27, 2015 and determined this bill will have a positive insignificant impact on state prison beds due to the low volume of offenses. This means CJIC estimates that this bill may increase the department's prison population by less than 10 inmates annually. See Fiscal Impact section.

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, teenagers, men, and women, and are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.¹ 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.² The federal government has estimated that the number of persons trafficked into the United States each year ranges from 14,500-17,500.³

It is estimated that as many as 300,000 American youth are currently at risk of becoming victims of commercial sexual exploitation.⁴ 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.⁵ The average age at which girls first become victims of prostitution is 12-14; for boys and transgender youth it is 11-13.⁶

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.⁷

Prostitution

Human trafficking in Florida proliferates through illegal industries such as prostitution.⁸ This illegal industry is thriving because of the demand of men soliciting prostitution.⁹ Chapter 796, F.S., defines prostitution as “the giving or receiving of the body for sexual activity for hire but excludes sexual activity

¹ U.S. Department of Health and Human Services, Administration for Children and Families, *About Human Trafficking*, <http://www.acf.hhs.gov/trafficking/about/index.html#> (last visited on February 3, 2015).

² See U.S. Department of State, *The 2013 Trafficking in Persons (TIP) Report*, June 2013, <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm> (last visited on February 3, 2015).

³ Sonide Simon, *Human Trafficking and Florida Law Enforcement*, Florida Criminal Justice Executive Institute, pg. 2, March 2008, <http://www.fdle.state.fl.us/Content/getdoc/e77c75b7-e66b-40cd-ad6e-c7f21953b67a/Human-Trafficking.aspx> (last visited on February 3, 2015).

⁴ *OJP Fact Sheet*, Office of Justice Programs, U.S. Department of Justice, December 2011, http://ojp.gov/newsroom/factsheets/ojpf_humanttrafficking.html (last visited February 3, 2015).

⁵ Tamar R. Birkhead, *The "Youngest Profession": Consent, Autonomy, and Prostituted Children*, 88 WASH. U.L. REV. 1055, 1092, n193 (2011).

⁶ *Id.*

⁷ 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, <http://www.sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf> (last visited on February 3, 2015).

⁸ Florida State University Center for the Advancement of Human Rights, “Florida Responds to Human Trafficking” Fall 2003 available at http://www.cahr.fsu.edu/sub_category/floridarespondstohumantrafficking.pdf (last visited January 29, 2015).

⁹ Cheryl George, *Jailing the Johns: The Issue of Demand in Human Sex Trafficking*, 13 FLA. COASTAL L. REV. 293, 299 (2012).

between spouses.”¹⁰ Currently, a person who solicits, induces, entices, or procures another to commit prostitution, lewdness or assignation (solicits) commits a second degree misdemeanor.¹¹ However, a second offense is a first degree misdemeanor,¹² and a third or subsequent offense is a third degree felony^{13 14}.

In addition to the criminal penalties, a civil penalty must be assessed against individuals that solicit prostitution.¹⁵ Prior to 2012, the civil penalty was \$500. In 2012, in an attempt to reduce instances of solicitation, the Legislature increased the civil penalty to \$5,000.¹⁶ In May of 2014, a Manatee County judge declared the \$5,000 civil penalty unconstitutional as an excessive fine in violation of both the state and federal constitution.¹⁷ The judge found the required \$5,000 fine excessive since the first offense for soliciting another to commit prostitution is a second degree misdemeanor, which is generally subject to a \$500 fine. The judge’s order is currently on appeal before Florida’s Third District Court of Appeals.

Sexual Violence Education Programs

Several states require a person convicted of soliciting prostitution to attend an educational program on sexual violence. For example, in Kansas, a judge may order a person convicted of buying sexual relations to complete an educational program on commercial sexual exploitation.¹⁸ In Nebraska, as a term of one’s probation, a john must complete a mental health and substance abuse assessment by a licensed mental health professional.¹⁹ New Jersey has even created a “Prostitution Offender Program” for those convicted patrons of prostitutes, which includes information on the causes of prostitution and its relationship to human trafficking.²⁰

In Florida, the Department of Health’s Sexual Violence Prevention Program contracts with rape crisis centers, county health departments, and other community based organizations to provide presentations on consent, coercion, and primary prevention of sexual assault.²¹ However, there is no current requirement for anyone convicted of s.796.07, F.S., to attend such presentations.

Effect of the Bill

The bill increases the criminal penalties for solicitation as follows:

- First offense is increased from a second degree misdemeanor to a first degree misdemeanor;
- Second offense is increased from a first degree misdemeanor to a third degree felony; and
- Third or subsequent offenses are increased from a third degree felony to a second degree felony.²²

The bill requires the court to sentence a person convicted of solicitation a second or subsequent time to serve a minimum of 10 days in jail.

¹⁰ s. 796.07(1)(a), F.S. “Sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation. . .” s. 796.07(1)(d), F.S.

¹¹ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

¹² A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

¹³ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

¹⁴ s. 796.07(4), F.S.

¹⁵ s. 796.07(6), F.S. The civil penalty is imposed in any judicial disposition other than acquittal or dismissal.

¹⁶ Ch. 2012-105, Laws of Fla. The civil penalty is distributed with the first \$500 paid to the circuit court administrator for funding drug courts and the remaining amount of the penalty deposited to the Operations and Maintenance trust fund at DCF for the purpose of funding safe houses.

¹⁷ *State v. Cotton*, Case No. 2013-MM-004788 (Fla. Manatee Cty. Ct. May 16, 2014). *See also* U.S. CONST. VIII and FLA. CONST. art. 1, s. 17.

¹⁸ Kan. Stat. Ann. § 21-6421.

¹⁹ Neb. Rev. Stat. § 28-801.01.

²⁰ N.J. Stat. Ann. § 2C:34-1.2.

²¹ Florida Department of Health, *Sexual Abuse or Violence Prevention*, <http://www.floridahealth.gov/programs-and-services/prevention/sexual-abuse-or-violence-prevention/index.html> (last visited February 3, 2015).

²² A second degree felony is punishable by up to 15 year imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

By increasing the penalty for a first offense of solicitation from a second degree misdemeanor to a first degree misdemeanor, courts may be less-inclined to deem the \$5,000 fine excessive since the amount of the fine is not as “grossly disproportional to the defendant’s offense.”²³

The bill also requires the court to order a person convicted of solicitation to perform 100 hours of community service, and attend and pay for an educational program about the negative effects of prostitution and human trafficking.

The bill also allows a judge to impound or immobilize the vehicle of a person convicted of solicitation for up to 60 days if the vehicle was used in the course of the violation.²⁴ Within 7 business days of the judge’s order, the clerk of court must send notice²⁵ of the order to the registered owner of the vehicle (if other than the defendant) and any one claiming a lien on the vehicle. The owner of the vehicle may request the court to dismiss the order. The court must dismiss the order, and the owner will incur no costs, if the owner alleges and the court finds to be true any of the following:

- The owner’s family has no other private or public means of transportation;
- The vehicle was stolen at the time of the offense;
- The owner purchased the vehicle after the offense was committed, and the sale was not made to circumvent the order and allow the defendant continued access to the vehicle; or
- The vehicle is owned by the defendant but is operated solely by employees of the defendant or employees of a business owned by the defendant.

If not dismissed, the petitioner may request an evidentiary hearing. If, at the evidentiary hearing, the court finds any of the above circumstances to be true, the court must dismiss the order and the owner of the vehicle will incur no costs.

Expunging Human Trafficking Criminal History Records

Section 943.0583, F.S., authorizes a victim of human trafficking to petition the court for the expunction of a criminal history record relating to an offense committed while he or she was a victim of human trafficking. A “victim of human trafficking” is defined as a person subjected to coercion for the purpose of being used in human trafficking, a minor who is a victim of human trafficking, or an individual subject to human trafficking as defined by federal law.²⁶

To receive the expunction, a victim of human trafficking must petition the court of original jurisdiction over the crime sought to be expunged.²⁷ A petition must be initiated with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking.²⁸ The petition must include:

- A sworn statement attesting that the victim is eligible for such expunction to the best of his or her knowledge or belief and does not have another petition to expunge or seal before any other court; and
- Official documentation of the victim’s status as a victim of human trafficking, if any exists.²⁹

At any hearing regarding the expunction, the petitioner or the petitioner’s attorney may appear telephonically, via video conference, or by other electronic means.³⁰ The court’s determination of the petition must be by a preponderance of the evidence.³¹ A determination made without official documentation must be made by a showing of clear and convincing evidence.³² If a court grants an expunction, criminal justice agencies with custody of the expunged record, except FDLE, must

²³ *United States v. Bajakajian*, 524 U.S. 321, 336 (1998).

²⁴ The order of impoundment or immobilization must include the names and telephone numbers of all immobilization agencies meeting all of the conditions of s. 316.193(13), F.S.

²⁵ The notice must be by certified mail, return receipt requested.

²⁶ s. 943.0583(1)(c), F.S.

²⁷ s. 943.0583(2), F.S.

²⁸ s. 943.0583(4), F.S.

²⁹ s. 943.0583(6), F.S.

³⁰ s. 943.0583(7)(b), F.S.

³¹ s. 943.0583(3), F.S.

³² s. 943.0583(5), F.S.

physically destroy the record.³³ Persons who have had their human trafficking criminal history records expunged may lawfully deny or fail to acknowledge the arrests that were expunged unless they are a candidate for employment with a criminal justice agency or a defendant in a criminal prosecution.³⁴

Effect of the Bill

The bill clarifies which court may grant an expunction by specifying that any court in the circuit in which the petitioner was arrested may order the expunction, as long as the court has jurisdiction over the class of offense or offenses sought to be expunged. It further clarifies that a human trafficking expunction petition need not be filed in the court where the petitioner's criminal proceeding or proceedings originally occurred. The bill also allows an advocate to be present with the petitioner during any human trafficking court proceedings. The advocate must be an advocate from a:

- State attorney's office;
- Law enforcement agency;
- Safe house³⁵ or safe foster home³⁶; or
- Residential facility offering services to adult victims of human trafficking.

B. SECTION DIRECTORY:

Section 1. Amends s. 796.07, F.S., relating to prohibiting prostitution and related acts.

Section 2. Amends s. 943.0583, F.S., relating to human trafficking victim expunction.

Section 3. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met February 27, 2015, and determined this bill will have a positive insignificant impact on state prison beds due to the low volume of offenses. This means CJIC estimates that this bill may increase the department's prison population by less than 10 inmates annually.

In Fiscal Year 2013-14, 336 offenders were convicted of a third degree felony for all offenses in s. 796.07, F.S. Of these offenders, 16 were sentenced to prison and 190 were sentenced to jail. It is not possible to separate those sentenced under, s. 796.07(2)(f) F.S., from the other felony offenses in s. 796.07, F.S., but misdemeanor data shows that 7.3% of 1st degree misdemeanor convictions were for violations of s. 796.07(2)(f) F.S. Applying the same percentage to third degree felony sentences results in approximately one offender going to prison and 14 offenders going to jail.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

³³ s. 943.0583(8)(a), F.S. Records retained by FDLE are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, except that the record must be made available to criminal justice agencies for their respective criminal justice purposes. s. 943.0583(10)(a), F.S.

³⁴ s. 943.0583(8)(b), F.S.

³⁵ A "safe house" means a group residential placement certified by the Department of Children and Families to care for sexually exploited children. s. 409.1678(1)(b), F.S.

³⁶ A "safe foster home" means a foster home certified by the Department of Children and Families to care for sexually exploited children. s. 409.1678(1)(a), F.S.

1. Revenues:

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

2. Expenditures:

Because the bill increases misdemeanor penalties for solicitation to felonies, it will likely have a negative jail bed impact (i.e., decrease the need for jail beds).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill authorizes a judge to impound or immobilize the car of a person convicted of solicitation for up to 60 days. The bill may have a positive fiscal impact on immobilization agencies.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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 February 11, 2015, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Requires a court to order a person convicted of solicitation to perform 100 hours of community service;
- Requires a court to sentence a person to 10 days in jail if it is the person's second or subsequent conviction for solicitation;
- Modifies the procedure for a court to dismiss an impoundment or immobilization order;
- Clarifies that a circuit court in the circuit in which the petitioner was arrested may grant a human trafficking expunction;
- Removes language allowing a judge to clear a court room during a human trafficking expunction hearing; and
- Allows an advocate to be present with the victim of human trafficking during any expunction court proceeding.

On March 26, 2015, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarifies that the expunction of a human trafficking victim's criminal history record may be done by any court within the judicial circuit if the court has jurisdiction over the class of offense or offenses sought to be expunged.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.