

**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 Fiscal Policy

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BILL: CS/SB 784

INTRODUCER: Criminal Justice Committee and Senator Flores

SUBJECT: Human Trafficking

DATE: February 16, 2016

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon	CJ	<b>Fav/CS</b>
2. Harkness	Sadberry	ACJ	<b>Recommend: Favorable</b>
3. Jones	Hrdlicka	FP	<b>Favorable</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 784 reclassifies human trafficking offenses under s. 787.06, F.S., if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person and clarifies that a person can be convicted of branding a victim of human trafficking if the branding is for the purpose of committing or facilitating the offense of human trafficking. The bill also adds human trafficking as a qualifying felony offense for first degree felony murder.

The bill increases the penalties for a first time violation of s. 796.06(2), F.S., from a second degree misdemeanor to a first degree misdemeanor and for a second or subsequent violation from a first degree misdemeanor to a third degree felony.

The bill amends s. 796.07, F.S. (prostitution and related acts), to:

- Remove minors from being prosecuted for prostitution, lewdness, or assignation under s. 796.07, F.S.;
- Specify that programs offered by faith-based providers may be included in required educational programs on the negative effects of prostitution and human trafficking; and
- Reclassify a violation of s. 796.07, F.S., to the next degree higher if the place, structure, building, or conveyance that is owned, established, maintained, or operated in violation of the statute is a massage establishment that is or should be licensed under s. 480.043, F.S.

The bill provides that only an adult may be charged with engaging in prostitution, lewdness, or assignation and removes language regarding the arrest or prosecution of a minor for the above offenses from the definition of “sexual abuse of a child” in s. 39.01, F.S.

The bill adds s. 796.07, F.S., to the list of offenses which:

- The Department of Health (DOH) has to issue an emergency order suspending a license;
- The Board of Massage Therapy has to deny an application for a new or renewal massage therapist license; and
- The DOH has to deny an application for a new or renewal massage establishment license.

The bill adds the offense of racketeering to the list of qualifying offenses for classification as a sexual predator or sexual offender only if the court makes a written finding that the racketeering activity involved at least one registration-qualifying sexual offense or one registration-qualifying offense with sexual intent or motive.

The Criminal Justice Impact Conference (CJIC) reviewed the bill on January 29, 2016, and concluded that the bill has an overall positive, but insignificant, impact on prison beds. As a result, the bill, as filed, has no significant fiscal impact to the state. The bill amends multiple statutes and therefore has varying effects on state prison beds. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2016.

## II. Present Situation:

### Background

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, teenagers, men, and women, who are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.<sup>1</sup> The International Labor Organization estimates more than 26 million adults and children are in forced labor, bonded labor, and commercial sexual servitude at any given time.<sup>2</sup> It is estimated that as many as 300,000 children in the United States are at risk for sexual exploitation each year.<sup>3</sup>

### 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 by using labor or

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<sup>1</sup> U.S. Department of Health and Human Services, Office on Trafficking in Persons. Administration for Children and Families, *What is Human Trafficking?*, (Aug. 16, 2012) available at <http://www.acf.hhs.gov/programs/endtrafficking/resource/about-human-trafficking> (last visited Feb. 13, 2016).

<sup>2</sup> United States Department of State, *Trafficking in Persons Report*, (June 2013) available at <http://www.state.gov/documents/organization/210737.pdf> (last visited Feb. 13, 2016).

<sup>3</sup> U.S. Department of Justice, Office of Justice Programs, *OJP Fact Sheet, Fast Facts*, (December 2011) available at [http://ojp.gov/newsroom/factsheets/ojpfs\\_humantrafficking.html](http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html) (last visited Feb. 13, 2016).

services or through commercial sexual activity.<sup>4</sup> Specifically, it is a second degree felony for a person to permanently brand, or direct to be branded, a victim of human trafficking.<sup>5</sup>

### **Felony Murder**

Felony murder is first degree murder when the unlawful killing of a human being is committed by a person engaged in the perpetration of, or in the attempt to perpetrate any felony offense listed in s. 782.04(1)(a)2., F.S. An example of such felony offenses in s. 782.04(1)(a)2., F.S., are drug trafficking, arson, and sexual battery. First degree murder is a capital felony punishable by death or life imprisonment.

Currently, human trafficking is not a listed felony offense.

### **Massage Therapist and Massage Establishment Licensing**

Chapter 480, F.S., entitled the “Massage Practice Act” (act), governs the practice of massage<sup>6</sup> in Florida. A significant portion of the act is dedicated to regulating massage establishments, which are defined as “a site or premises, or portion thereof, wherein a massage therapist practices massage.”<sup>7</sup>

In order to be licensed as a massage therapist, an applicant must meet certain criteria.<sup>8</sup> Massage establishments may only operate if they have applied for and received a license from the Department of Health (DOH) in accordance with rules adopted by the Board of Massage Therapy (Board).<sup>9</sup> The Board’s rules:

- Govern the operation of massage establishments and their facilities, personnel, safety and sanitary requirements, financial responsibilities, and insurance coverages;
- Require the DOH to inspect a proposed massage establishment upon receipt of an application for licensure to ensure that the site is to be utilized for massage; and
- Require the DOH to periodically inspect licensed massage establishments at least once a year.<sup>10</sup>

In addition to practicing massage therapy in a licensed massage establishment, a massage therapist may practice at a client’s residence or office, at a sports event, or at a convention or trade show.<sup>11</sup>

The DOH must issue an emergency order suspending the license of a massage therapist or massage establishment upon information that the therapist, a person with ownership interest in

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<sup>4</sup> See ss. 787.06(3) and (4), F.S.

<sup>5</sup> Section 787.06(4)(b), F.S. “Permanently branded” is defined as a mark on the body that can only be removed or repaired by surgical means, laser treatment, or other medical procedure.

<sup>6</sup> “Massage” is defined as the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation. Section 480.033(3), F.S.

<sup>7</sup> Section 480.033(7), F.S.

<sup>8</sup> See ss. 480.041 and 480.042, F.S.

<sup>9</sup> Section 480.043(1), F.S.

<sup>10</sup> See Rules 64B7-26.003, 64B7-26.004, and 64B7-26.005, F.A.C.

<sup>11</sup> Section 480.046(1)(o), F.S.

the establishment, or other specified person<sup>12</sup> has committed a specified felony offense including a violation of Florida's human trafficking statute.<sup>13</sup>

The Board must also deny an application for a new or renewal massage therapist license if the applicant has committed a specified felony offense.<sup>14</sup> Similarly, the DOH must deny an application for a new or renewal massage establishment license if the applicant has committed a specified felony offense.<sup>15</sup> The specified felony offenses include a violation of Florida's human trafficking statute.

### **Renting and Using Space for Lewdness, Assignment, or Prostitution**

Section 796.06(1), F.S., provides that it is unlawful for any person to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used for the purpose of lewdness, assignment,<sup>16</sup> or prostitution. A first violation of s. 796.06, F.S., is a second degree misdemeanor<sup>17</sup> and a second or subsequent violation is a first degree misdemeanor.<sup>18</sup>

### **Prostitution**

Section 796.07(2)(a), F.S., makes it unlawful to establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignment, or prostitution, which is punishable by a:

- Second degree misdemeanor for a first violation;
- First degree misdemeanor for a second violation; or
- Third degree felony for a third or subsequent violation.<sup>19</sup>

In 2014, the Legislature added legislative intent to ch. 796, F.S., directing the prosecutions of adults who involve minors in prostitution to be prosecuted under other chapters of law as minors are unable to consent to an act of prostitution.<sup>20</sup> Adults who use minors in any act prohibited under ch. 796, F.S., should not be prosecuted under ch. 796, F.S., but should rather be prosecuted under other criminal laws, such as, but not limited to s. 787.06, F.S. (human trafficking), ch. 794, F.S. (sexual battery), ch. 800, F.S. (lewdness and indecent exposure), s. 810.145, F.S. (video voyeurism), ch. 827, F.S. (abuse of children), and ch. 847, F.S. (obscenity).<sup>21</sup>

<sup>12</sup> For a corporation that has more than \$250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of the establishment. Section 456.074(5), F.S.

<sup>13</sup> Section 456.074(5), F.S.

<sup>14</sup> Section 480.041(7), F.S.

<sup>15</sup> Section 480.043(8), F.S.

<sup>16</sup> The term "assignment" is not defined in statute. In the context of s. 796.06, F.S., it is essentially setting up an appointment or meeting for prostitution or related acts punished by the statute.

<sup>17</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

<sup>18</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>19</sup> Section 796.07(4)(a), F.S.

<sup>20</sup> Chapter 2014-160, L.O.F.

<sup>21</sup> Section 796.001, F.S.

The legislation also repealed the following provisions from ch. 796, F.S.:

- Procuring persons under age 18 for prostitution;
- Selling or buying of minors into prostitution; and
- Reclassifying prostitution violations involving minors.<sup>22</sup>

Currently both minors and adults may be charged with engaging in prostitution, lewdness, or assignment.<sup>23</sup>

### **Sexual Predator and Sexual Offender Registration**

Florida law requires certain persons to register as a sexual predator or sexual offender. A person is designated by a court to be a sexual predator and administratively determined to be a sexual offender by the Florida Department of Law Enforcement (FDLE). Generally, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred.<sup>24</sup>

A sexual predator or sexual offender must comply with a number of registration requirements.<sup>25</sup> Most of these requirements relate to the registration of particular identifying and residential information but other information may also be required (e.g., vehicular information, attendance at an institution of higher education, and temporarily or permanently departing from or reentering this state).

Section 775.21(4)(a), F.S., provides a list of offenses that designate a person as a sexual predator.

Sections 943.0435, 944.606, and 944.607, F.S., all provide a list of offenses that, if convicted of, means that person is a sexual offender.

Currently, a person convicted of racketeering under s. 895.03, F.S., that involved an offense listed in the above statutes is a sexual predator or sexual offender.

### **III. Effect of Proposed Changes:**

#### **Human Trafficking**

The bill reclassifies an offense under s. 787.06, F.S., if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person. The reclassification makes:

- A second degree felony<sup>26</sup> a first degree felony;<sup>27</sup> and

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<sup>22</sup> *Supra* note 20.

<sup>23</sup> Section 796.07(2)(e), F.S.

<sup>24</sup> *See* ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815, F.S.

<sup>25</sup> *Id.* Failure to comply with these requirements is generally a third degree felony. *See* ss. 775.21, 943.0435, and 985.4815, F.S.

<sup>26</sup> A second degree felony is punishable by up to fifteen years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>27</sup> A first degree felony is punishable by up to thirty years imprisonment or when provided in statute by imprisonment for a term of years not exceeding life imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

- A first degree felony a life felony.<sup>28</sup>

The bill also clarifies a person can only be convicted of branding a victim of human trafficking if the branding is for the purpose of committing or facilitating and offence of human trafficking.<sup>29</sup>

### **Felony Murder**

The bill amends s. 782.04(1)(a)2., F.S., to add human trafficking as a qualifying felony offense for first degree felony murder.

### **Renting and Using Space for Lewdness, Assignment, or Prostitution**

The bill increases the penalties for a first time violation of s. 796.06(2), F.S., from a second degree misdemeanor to a first degree misdemeanor and for a second or subsequent violation from a first degree misdemeanor to a third degree felony.<sup>30</sup>

### **Prostitution**

The bill amends s. 796.07(2)(e), F.S., to provide that only an adult may be charged with engaging in prostitution, lewdness, or assignment. The bill also removes language regarding the arrest or prosecution of a minor for the above offenses from the definition of “sexual abuse of a child” in s. 39.01, F.S.

Section 796.07(5), F.S., currently provides that the court must order a person convicted of soliciting, inducing, enticing or procuring another to commit prostitution, lewdness, or assignment<sup>31</sup> to pay and attend an educational program about the negative effects of prostitution and human trafficking, such as a sexual violence prevention education program. The bill specifies that an educational program includes such programs offered by faith-based providers, if they exist in the judicial circuit in which the offender is sentenced.

The bill creates s. 796.07(7), F.S., to reclassify a violation of s. 796.07(2)(a), F.S., if the place is a massage establishment, from a:

- Second degree misdemeanor for a first violation, to a first degree misdemeanor;
- First degree misdemeanor for a second violation, to a third degree felony; and
- Third degree felony for a third or subsequent violation, to a second degree felony.

### **Massage Therapist and Massage Establishment Licensing**

The bill requires the DOH to issue an emergency order suspending the license of a massage therapist or the massage establishment if the therapist, establishment owner, or other specified

<sup>28</sup> A life felony is punishable by life imprisonment or a term of years not exceeding life imprisonment and a \$15,000 fine. Sections 775.082 and 775.083, F.S.

<sup>29</sup> For example, a tattoo artist could not be arrested for giving a tattoo to a victim of human trafficking years after the trafficking occurred.

<sup>30</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>31</sup> Section 796.07(2)(f), F.S.

person has violated s. 796.07(2)(a), F.S. and to deny an application for a new or renewal massage establishment license if the applicant violated s. 796.07(2)(a), F.S.

The bill also requires the Board to deny an application for a new or renewal massage therapist license if the applicant has violated of s. 796.07(2)(a), F.S.

### **Sexual Predator and Sexual Offender Registration**

The bill amends the list of offenses in ss. 775.21, 943.0435, 944.606, and 944.707, F.S., to add the offense of racketeering (s. 895.03, F.S.) to the list of qualifying offenses for the classification as a sexual predator or sexual offender. The offense of racketeering is only a qualifying offense for such a classification if the court makes a written finding that the racketeering activity involved at least one sexual offense included in the definition of a sexual predator or sexual offender or the offense listed in the definition of sexual predator or sexual offender involved sexual intent or motive.

The bill reenacts numerous sections of the Florida Statutes to incorporate the above described amendments. See Section VIII. Statutes Affected.

The bill is effective October 1, 2016.

## **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), which provides the official estimate of the prison bed impact, reviewed the bill on January 29, 2016 and concluded that the bill,

as originally filed, has an overall positive, but insignificant, impact on prison beds. As a result, the bill has no significant fiscal impact to the state. The bill amends multiple statutes, and therefore has varying effects on state prison beds, as follows:

- **(Felony Murder)** s. 782.04(1)(a)2., F.S.: In Fiscal Year 2014-2015, 12 offenders were sentenced under s. 787.06, F.S. (Human Trafficking), 9 of the 12 were sentenced to prison, and none of were charged with the additional offense of felony murder. The CJIC estimated that the amendment to s. 782.04(1)(a)2., F.S., has a positive, but insignificant prison bed impact.
- **(Human Trafficking)** s. 787.06(4)(b), F.S.: In Fiscal Year 2014-2015, there were no offenders sentenced under s. 787.06(4)(b), F.S. The CJIC estimated that the amendment to s. 787.06(4)(b), F.S., has a negative, but insignificant prison bed impact.
- **(Human Trafficking)** s. 787.06, F.S.: In Fiscal Year 2014-2015, 12 offenders were sentenced under s. 787.06, F.S., and 9 of the 12 were sentenced to prison. Two offenders were charged with felony battery in addition to human trafficking, and one was charged with domestic battery. The CJIC estimated that the amendment to s. 787.06, F.S., has a positive, but insignificant prison bed impact.
- **(Human Trafficking)** s. 796.06(2)(b), F.S.: In Fiscal Year 2014-2015, of the 8 convictions and 1 adjudication withheld for violating s. 796.06, F.S., all were second degree misdemeanors and none were repeat offenders. In Fiscal Year 2014-2015, the incarceration rate for an unranked third degree felony was 9.9 percent. The CJIC estimated that the amendment to s. 796.06(2)(b), F.S., has a positive, but insignificant prison bed impact.
- **(Prostitution)** s. 796.07(2)(a), F.S.: In Fiscal Year 2014-2015, there were no guilty/convicted counts and 2 adjudication withheld counts for violating s. 796.07(2)(a), F.S. The CJIC estimated that the amendment to s. 796.07(2)(a), F.S., has a positive, but insignificant prison bed impact.
- **(Prostitution)** s. 796.07(2)(e), F.S.: In Fiscal Year 2014-2015, there was 1 convicted and 1 adjudication withheld for violating s. 796.07(2)(e), F.S. In Fiscal Year 2014-2015, no offenders were sentenced for committing the offense of prostitution for a third or subsequent violation while under 18. The CJIC estimated that the amendment to s. 796.07(2)(e), F.S., has a negative, but insignificant prison bed impact.
- **(Sexual Predator and Sexual Offender Registration)** ss. 775.21, 943.0435, 944.606, and 944.607, F.S.: In Fiscal Year 2014-2015, there were 12 offenders sentenced under s. 787.06, F.S. (Human Trafficking); 9 of these offenders were sentenced to prison and 1 was sentenced to prison for both racketeering and sexual offenses. The CJIC estimated that the amendment to ss. 775.021, 943.0435, 944.606, 944.607, F.S., has a positive, but insignificant prison bed impact.

#### VI. Technical Deficiencies:

None.

#### VII. Related Issues:

None.



## VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.01, 456.074, 480.041, 480.043, 782.04, 787.06, 796.06, 796.07, 775.21, 943.0435, 944.606, and 944.607.

The bill reenacts provisions of the following sections of the Florida Statutes: 39.0139, 39.509, 39.806, 60.05, 63.089, 63.092, 68.07, 92.55, 95.11, 322.141, 394.495, 394.912, 394.9125, 397.4872, 409.1678, 775.082, 775.0823, 775.0862, 775.0877, 775.13, 775.15, 775.21, 775.24, 775.25, 775.261, 782.065, 794.075, 796.08, 796.09, 895.02, 903.0351, 903.046, 921.0022, 921.16, 921.141, 938.10, 943.0435, 943.0436, 944.607, 944.608, 944.609, 947.1405, 947.146, 948.06, 948.062, 948.063, 948.064, 948.12, 948.16, 948.30, 948.31, 960.065, 985.04, 985.265, 985.4815, 1012.315, and 1012.467.

## IX. 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 25, 2016:**

- Reclassifies the felony degree of human trafficking offenses under s. 787.06, F.S., which increases the maximum penalty of these offenses, if the victim suffers great bodily harm, permanent disability, or permanent disfigurement;
- Clarifies that the offense of branding a victim of human trafficking is for the purpose of committing or facilitating a human trafficking offense under s. 797.06, F.S.;
- Adds human trafficking as a predicate (qualifying) felony for first degree murder in the commission of a felony;
- Increases from a second degree misdemeanor (maximum penalty of 60 days in jail) to a first degree misdemeanor (up to one year in jail) a first violation of s. 796.06, F.S. (renting space to be used for lewdness, assignation, prostitution), and increases from a first degree misdemeanor to a third degree felony (maximum penalty of five years in state prison) a second or subsequent violation of that statute;
- Amends s. 796.07, F.S. (prostitution and related acts) to reclassify the misdemeanor or felony degree of a violation of s. 796.07, F.S., if the place, structure, building, or conveyance that is owned, established, maintained, or operated in violation of the statute is a massage establishment that is or should be licensed under s. 480.043, F.S.;
- Requires the Department of Health to issue an emergency order suspending the license of a massage therapist of the massage establishment if the therapist, establishment owner, etc., committed a reclassified violation of s. 796.07, F.S.;
- Requires the Board of Massage Therapy to deny an application for a new or renewal massage therapist license if the applicant has committed a reclassified violation of s. 796.07, F.S.;
- Requires the Department of Health to deny an application for a new or renewal massage establishment license if the applicant has committed a reclassified violation of s. 796.07, F.S.; and

- Consistent with removing minors from being prosecuted for a violation of s. 796.07, F.S., involving prostitution, lewdness, or assignation, removing language regarding arrest or prosecution of a minor for these offenses from the definition “sexual abuse of a child” in ch. 39, F.S. (child dependency).

B. Amendments:

None.