

**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 Criminal Justice

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BILL: SB 784

INTRODUCER: Senator Flores

SUBJECT: Human Trafficking

DATE: January 22, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Pre-meeting</b>
2.			ACJ	
3.			FP	

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**I. Summary:**

SB 784 addresses human trafficking and offenses that are often associated with human trafficking by:

- Providing that certain offenses relating to human trafficking for labor or services of a minor or commercial sexual activity of a minor also apply to adults;
- Eliminating coercion as an element of certain human trafficking offenses and eliminating certain human trafficking offenses that include coercion as an element;
- Punishing human trafficking for noncommercial sexual activity involving a minor or a mentally defective or mentally incapacitated person;
- Providing that it is a third degree felony (maximum penalty of 5 years in state prison) to rent space to be used for lewdness, assignation, or prostitution if the offense is committed in conjunction with a health care profession or in a massage establishment;
- Requiring the Department of Health to deny an application for a new or renewal license for a massage establishment if the establishment owner, etc., commits the offense of renting space to be used for lewdness, assignation, or prostitution;
- Making prostitution and related acts applicable solely to adults;
- Specifying that programs offered by faith-based providers are included in a required educational program on the negative effects of prostitution and human trafficking (applicable to offenders sentenced for soliciting prostitution or related acts) if such programs exist in the judicial circuit; and
- Adding racketeering to the list of the offenses that may require a person to register as a sexual predator of sexual offender 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.

## II. Present Situation:

### Human Trafficking

Section 787.06, F.S., punishes human trafficking, which the statute defines 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 labor or services or for commercial sexual activity.<sup>1</sup> Some of these offenses involving adults require that the human trafficking involve “coercion,” a defined term that includes such acts as: using or threatening physical force against a person; and restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will.<sup>2</sup>

Relevant to the bill, s. 787.06(3)(g), F.S., provides that it is a life felony for a person to knowingly, or in reckless disregard of the facts, engage in human trafficking, or attempt to engage in human trafficking, or benefit financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for *commercial sexual activity* involving any child under the age of 18 or any person who is mentally defective or mentally incapacitated as those terms are defined in s. 794.011(1), F.S.<sup>3</sup> This offense does not currently cover noncommercial sexual activity.

### Massage Establishment Licensing

Relevant to the bill, the Department of Health (DOH) states:

The department is responsible for approving or denying all applications for an initial massage establishment license and for renewing a license each biennium. All persons with an ownership interest in the establishment or, 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 of the establishment applicant must submit to background screening. Section 480.043(8), F.S., provides a list of felony offenses found in other provisions of state law.<sup>4</sup> If certain persons specified in this subsection were convicted or found guilty of, or entered a guilty plea or nolo contendere to, regardless of adjudication, a felony listed in this subsection, the department will deny

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<sup>1</sup> See s. 787.06(3) and (4), F.S.

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

<sup>3</sup> “Mentally defective” means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct. Section 794.011(1)(b), F.S. “Mentally incapacitated” means temporarily incapable of appraising or controlling a person’s own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent. Section 794.011(1)(c), F.S.

<sup>4</sup> Examples of such offenses include: human trafficking (s. 787.06, F.S.), forcing, compelling, or coercing another to become a prostitute (s. 796.04, F.S.); deriving support from the proceeds of prostitution (s. 796.04, F.S.); and a third or subsequent violation of s. 796.07, F.S., relating to prostitution and related acts (s. 796.07(4)(c), F.S.). Section 480.043(8)(d) and (j)-(l), F.S.

the initial application for licensure and the department will deny renewal of an existing license.<sup>5</sup>

### **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>6</sup> or prostitution. Section 796.06(2), F.S., provides that a first violation of s. 796.06, F.S., is a second degree misdemeanor; a second or subsequent violation is a first degree misdemeanor.

### **Prostitution**

Section 796.07(2), F.S., punishes engaging in prostitution and related acts. Currently both minors and adults may be charged with a violation of this statute. An example of a related act is s. 787.07(2)(f), F.S., which punishes soliciting, inducing, enticing, or procuring another to commit prostitution, lewdness, or assignment. Relevant to the bill, s. 796.07(5), F.S., in part, provides that in addition to any other penalty imposed, the court shall order a person convicted of a violation of paragraph (2)(f) to pay for and attend an educational program about the negative effects of prostitution and human trafficking, such as a sexual violence prevention education program, if such program exists in the judicial circuit in which the offender is sentenced.

In 2014, the Legislature amended ch. 796, F.S.<sup>7</sup> One of the amendments was the creation of s. 796.001, F.S., which provides:

It is the intent of the Legislature that adults who involve minors in any behavior prohibited under this chapter be prosecuted under other laws of this state, such as, but not limited to, s. 787.06, chapter 794, chapter 800, s. 810.145, chapter 827, and chapter 847. The Legislature finds that prosecution of such adults under this chapter is inappropriate since a minor is unable to consent to such behavior.

This 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.

### **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). In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person

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<sup>5</sup> 2016 Agency Legislative Bill Analysis (SB 784) (November 9, 2015), Florida Department of Health (on file with the Senate Committee on Criminal Justice).

<sup>6</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>7</sup> Ch 2014-160, L.O.F.

has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred.<sup>8</sup>

A sexual predator or sexual offender must comply with a number of registration requirements.<sup>9</sup> Most of these requirements relate to the registration of particular identifying and residence 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). The agency to which the person reports this information is determined by the person's status or the type of information that has to be reported. For example, if the person is not in the custody of or under the supervision of the Department of Corrections, Department of Juvenile Justice, or Department of Children and Families (civilly-confined violent sexual predators), he or she would report, in most circumstances, to the local sheriff's office. An exception would be reporting to the Department of Highway Safety and Motor Vehicles to obtain or renew a driver license or state identification card (or to update information relevant to the license or card).

Information reported by registered sexual predators and sexual offenders is provided to the FDLE and entered in a statewide database. The FDLE maintains a website that makes available to the public some of this information (e.g., identifying information, residence information, and registration-qualifying sexual offense or offenses).<sup>10</sup>

### III. Effect of Proposed Changes:

The bill, which takes effect October 1, 2016, addresses human trafficking and offenses often associated with human trafficking, in the following manner:

#### Human Trafficking

The bill amends s. 787.06, F.S., the human trafficking statute, to:

- Remove coercion as an element of certain human trafficking offenses;
- Provide that various human trafficking offenses currently applicable when the victim is a minor will also apply to an adult; and
- Punish human trafficking for *noncommercial sexual activity* involving a child under the age of 18 or a person who is mentally defective or mentally incapacitated.

The changes are described with more specificity as follows:

- The definition of "coercion"<sup>11</sup> is removed.
- The offense of human trafficking using coercion for labor or services of an adult<sup>12</sup> is removed. The offense of human trafficking for labor or services of any child under the age of

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<sup>8</sup> See ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815, F.S.

<sup>9</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>10</sup> See <https://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on January 20, 2016).

<sup>11</sup> Section 787.06(2)(a), F.S.

<sup>12</sup> A first degree felony and Level 7 offense. Sections 787.06(3)(a)2. and s. 921.0022(3)(g), F.S.

18<sup>13</sup> is modified to include adults (the words “child under the age of 18” are removed and the word “person” is substituted).

- The offense of human trafficking using coercion for labor or services of an adult who is an unauthorized alien<sup>14</sup> is removed. The offense of human trafficking for labor or services of any child under the age of 18 who is an unauthorized alien<sup>15</sup> is modified to include adults who are unauthorized aliens (the words “child under the age of 18” are removed).
- The offense of human trafficking using coercion for commercial sexual activity of an adult<sup>16</sup> is modified to remove the coercion element (the words “using coercion” are removed).
- The offense of human trafficking using coercion for commercial sexual activity of an adult who is an unauthorized alien<sup>17</sup> is modified to remove the coercion element (the words “using coercion” are removed).
- The offense of human trafficking using coercion for labor or services by transfer or transport of an adult from outside this state to within the state<sup>18</sup> is removed. The offense of human trafficking for labor or services by transfer or transport of any child under the age of 18 from outside this state to within the state<sup>19</sup> is modified to include adults (the words “child under the age of 18” are removed and the word “person” is substituted).
- The offense of human trafficking using coercion for commercial sexual activity by transfer or transport of an adult from outside this state to within the state<sup>20</sup> is removed. The offense of human trafficking for labor or services by transfer or transport of any child under the age of 18 from outside this state to within the state<sup>21</sup> is modified to include adults (the words “child under the age of 18” are removed and the word “person” is substituted).
- The offense of human trafficking for commercial sexual activity involving a child under the age of 18 or a person who is mentally defective or mentally incapacitated<sup>22</sup> is modified to include noncommercial sexual activity involving such persons.

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

The bill creates s. 796.06(2)(b), F.S., which provides that it is a third degree felony (maximum penalty of 5 years in state prison) 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, or prostitution if a person committed this violation:

- In connection with the practice of a health care profession regulated under ch. 456, F.S.;
- While practicing as a health care practitioner as defined in s. 456.001, F.S.; or
- In a massage establishment required to be licensed under s. 480.043, F.S.

<sup>13</sup> A first degree felony and a Level 8 offense. Sections 787.06(3)(a)1. and s. 921.0022(3)(h), F.S.

<sup>14</sup> A first degree felony and a Level 8 offense. Sections 787.06(3)(c)2. and s. 921.0022(3)(h), F.S.

<sup>15</sup> A first degree felony and a Level 9 offense. Sections 787.06(3)(c)1. and s. 921.0022(3)(i), F.S.

<sup>16</sup> A first degree felony and a Level 8 offense. Sections 787.06(3)(b) and s. 921.0022(3)(h), F.S.

<sup>17</sup> A first degree felony and a Level 9 offense. Sections 787.06(3)(d) and s. 921.0022(3)(i), F.S.

<sup>18</sup> A first degree felony and a Level 7 offense. Sections 787.06(3)(e)2. and s. 921.0022(3)(g), F.S.

<sup>19</sup> A first degree felony and a Level 8 offense. Sections 787.06(3)(e)1. and s. 921.0022(3)(h), F.S.

<sup>20</sup> A first degree felony and a Level 8 offense. Sections 787.06(3)(f)2. and s. 921.0022(3)(h), F.S.

<sup>21</sup> A first degree felony punishable by a terms of years not exceeding life and a Level 9 offense. Sections 787.06(3)(f)1. and s. 921.0022(3)(i), F.S.

<sup>22</sup> A life felony and a Level 10 offense. Sections 787.06(3)(g) and s. 921.0022(3)(j), F.S.

The bill amends s. 480.043, F.S., to require the DOH to deny an application for a new or renewal license for a massage establishment if the owner, etc., of the establishment violates s. 796.06(2)(b), F.S.

### **Prostitution**

Section 797.07(2), F.S., punishes engaging in prostitution and related acts. Currently both minors and adults may be charged with a violation of this statute. The bill provides that this statute will only apply to adults.

Section 796.07(2)(f), F.S., provides that it is unlawful to solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation. Section 796.07(5), F.S., in part, provides that in addition to any other penalty imposed, the court shall order a person convicted of a violation of paragraph (2)(f) to pay for and attend an educational program about the negative effects of prostitution and human trafficking, such as a sexual violence prevention education program, if such program exists in the judicial circuit in which the offender is sentenced. The bill specifies an educational program includes such programs offered by faith-based providers (if they exist in the judicial circuit in which the offender is sentenced).

### **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., which are relevant qualifying offenses for purposes of designation as a sexual predator or classification as a sexual offender and for registration requirements applicable to those offenders. The bill adds the following additional qualifying offense: racketeering (s. 895.03, F.S.) where the court has made a written finding that the racketeering activity involved at least one sexual offense in the list of qualifying offenses or at least one offense in the list with sexual intent or motive.

## **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, which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. However, the Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a positive insignificant prison bed impact (an increase of 10 or fewer prison beds). Provided are the EDR's preliminary estimates of specific provisions of the bill:

**Human Trafficking**

The bill makes numerous changes to s. 787.06, F.S., the human trafficking statute. (See "Effect of Proposed Changes" section of this analysis for a description of those changes.) The EDR's preliminary estimate is that the changes to s. 787.06, F.S., will have a positive insignificant prison bed impact. The EDR states:

Per DOC, in FY 14-15, there were 12 (adj.) offenders sentenced under s. 787.06, F.S. (human trafficking), and 9 (adj.) of these offenders were sentenced to prison (mean sentence length=149.3 m, incarceration rate: 75.0% adj.-77.8% unadj.). The pool of offenders committing each of these adjusted offenses is small. Also, the addition of "noncommercial sexual activity" for children under 18 or anyone that is mental defective/incapacitated are generally covered with 1st degree felonies in current statute.

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

The bill amends s. 796.06, F.S., to create an unranked third degree felony for a person who rents space to be used for lewdness, assignation, or prostitution in connection with the practice of a health care profession regulated under ch. 456, F.S., while practicing as a health care practitioner as defined in s. 456.001, F.S., or in a massage establishment required to be licensed under s. 480.043, F.S. The EDR's preliminary estimate is that the changes to s. 796.06, F.S., will have a positive insignificant prison bed impact. The EDR states:

Per FDLE, in FY 14-15, of the 8 guilty/convicted counts and 1 adjudication withheld count for violating s. 796.06, F.S., all were 2nd degree misdemeanors and none of these were repeat offenders. There were no guilty/convicted counts and 2 adjudication withheld counts for violating s. 796.07(2)(a), F.S., which involves a "place, structure, building, or conveyance that is owned, established, maintained, or operated for prostitution is a massage establishment." In FY 14-15, the incarceration rate for an unranked, 3rd degree felony was 9.9%.

### **Prostitution**

The bill amends s. 796.07, F.S., to provide that only an adult may be charged with engaging in prostitution and related acts under this statute. The EDR's preliminary estimate is that the changes to s. 796.07, F.S., will have a negative insignificant prison bed impact (a decrease of 10 or fewer prison beds). The EDR states:

Per FDLE, in FY 14-15, there was 1 guilty/convicted count and 1 adjudication withheld count for violating s. 796.07(2)(e), F.S. as a juvenile. Per DOC, in FY 14-15, there were no offenders sentenced for committing the offense of prostitution for a third or subsequent violation while under 18 years of age.

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

The bill amends the list of offenses in ss. 775.21, 943.0435, 944.606, and 944.707. These offenses are relevant qualifying offenses for purposes of designation as a sexual predator or classification as a sexual offender and for registration requirements applicable to those offenders. The EDR's preliminary estimate is that the changes to these statutes will have a positive insignificant prison bed impact. The EDR states:

Per DOC, in FY 14-15, there were 12 (adj.) offenders sentenced under s. 787.06, F.S. (human trafficking), and 9 (adj.) of these offenders were sentenced to prison (mean sentence length=149.3 m, incarceration rate: 75.0% adj.-77.8% unadj.).

## **VI. Technical Deficiencies:**

On page 36 of the bill, line 554, new s. 787.06(3)(c), F.S., is ranked in Level 8 of the offense severity ranking chart of the Criminal Punishment Code. On page 46, line 625, of the bill, new s. 787.06(3)(c), F.S., is ranked in Level 9. New s. 787.06(3)(c), F.S., is essentially current s. 787.06(3)(c)1., F.S., with modifications. Since current s. 787.06(3)(c)1., F.S., is a Level 9 offense, new s. 787.06(3)(c), F.S., should reflect this Level 9 ranking.

Page 36, line 553, of the bill removes reference to the victim being an adult in the description of the current Level 8 ranking of s. 787.06(3)(b), F.S. This is incorrect. On page 4, line 101, the bill amends this offense to delete the coercion element but does not delete the element of the victim being an adult. Therefore, the descriptive language relating to the victim being an adult should be retained (not stricken through).

Similarly, page 47, line 626, of the bill removes reference to the victim being an adult in the description of the current Level 9 ranking of s. 787.06(3)(d), F.S. This is incorrect. On page 4, line 111, the bill amends this offense to delete the coercion element but does not delete the element of the victim being an adult. Therefore, the descriptive language relating to the victim being an adult should be retained (not stricken through).

## **VII. Related Issues:**

None.



**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 480.043, 787.06, 796.06, 796.07, 775.21, 943.0435, 944.606, 944.607, 39.01305, and 921.0022.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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

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