

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1165 Victims of Human Trafficking  
**SPONSOR(S):** Civil Justice & Claims Subcommittee; Spano and others  
**TIED BILLS:** CS/HB 1167; CS/HB 1417 **IDEN./SIM. BILLS:** SB 972

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	14 Y, 0 N, As CS	MacNamara	Bond
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Human trafficking is the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person.

Current law creates a Statewide Council on Human Trafficking to assist in combating human trafficking; criminal penalties for traffickers; a limited civil cause of action for victims of human trafficking who were injured as a part of a pattern, enterprise, or conspiracy of human trafficking; and civil forfeiture to local law enforcement agencies of property used by human traffickers.

The bill creates a new cause of action for a victim of human trafficking. The bill also allows the Statewide Council on Human Trafficking to file the cause of action on behalf of victims of human trafficking. In addition to the damages available to the council or victims, the bill provides for a \$100,000 civil penalty for the council or victim in addition to punitive damages. Additionally, a law enforcement agency is entitled to a \$50,000 civil penalty in the event the agency rescued a victim or located the property where the trafficking occurred.

The bill also provides for civil judicial forfeiture proceedings that may be brought by the council against the real and personal property of a person who knowingly participated in human trafficking. Forfeiture may also be filed against property where the owner allowing human trafficking to happen by willful blindness.

The forfeiture proceedings under the bill take priority over a forfeiture made by a local law enforcement agency under the Florida Contraband Act. The bill details the procedures for these forfeiture proceedings. The bill also provides for the method of distribution where the victim or council prevail and for the method of release and assessment of costs and fees where the property owner prevails.

There is no statute of limitations for proceedings or actions brought pursuant to the bill.

A tied bill creates the Florida Compensation Trust Fund for Survivors of Human Trafficking. The trust fund will be funded from recoveries in civil actions and forfeitures.

The bill appropriates \$153,000 in recurring funds and \$29,000 in non-recurring funds and authorizes 3.0 FTE's payable in fiscal year 2017-18 from the Crimes Compensation Trust Fund. There may be a negative fiscal impact on local governments if they lose priority in forfeiture actions.

The bill has an effective date of July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Human Trafficking

Human trafficking is a form of modern-day slavery. Human trafficking is defined as the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person.<sup>1</sup>

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>2</sup> The International Labor Organization, the United Nations agency charged with addressing labor standards, employment, and social protection issues, estimates that as many as 27 million adults and children are in forced labor, bonded labor, and commercial sexual servitude at any given time.<sup>3</sup> The federal government has estimated that the number of persons trafficked into the United States each year ranges from 14,500 to 17,500.<sup>4</sup>

It is also estimated that as many as 300,000 American youth are currently at risk of becoming victims of commercial sexual exploitation.<sup>5</sup> The majority of American victims of commercial sexual exploitation tend to be runaway youth living on the streets, and generally come from homes where they have been abused, or from families that have abandoned them.<sup>6</sup> These children often become involved in prostitution as a way to support themselves financially.<sup>7</sup> The average age at which girls first become victims of prostitution is 12 to 14 years old; for boys and transgender youth it is 11 to 13 years old.<sup>8</sup>

Currently, a person who knowingly, or in reckless disregard of the facts, engages in human trafficking may be subject to the criminal penalties as provided for under s. 787.06(3), F.S. This section also applies to persons who attempt to engage in human trafficking, recklessly disregard facts of human trafficking, or benefit financially from participating in a human trafficking venture.

##### Statewide Council on Human Trafficking

The state created the Statewide Council on Human Trafficking for the purpose of enhancing the development and coordination of law enforcement agencies and social services responders to fight commercial sexual exploitation as a form of human trafficking and to support victims.<sup>9</sup> The council is

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<sup>1</sup> s. 787.06(2)(d), F.S.

<sup>2</sup> 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#>

<sup>3</sup> 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>

<sup>4</sup> 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>

<sup>5</sup> *OJP Fact Sheet*, Office of Justice Programs, U.S. Department of Justice, December 2011, [http://ojp.gov/newsroom/factsheets/ojpfs\\_humantrafficking.html](http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html)

<sup>6</sup> Tamar R. Birckhead, *The "Youngest Profession": Consent, Autonomy, and Prostituted Children*, 88 WASH. U.L. REV. 1055, 1092, n193 (2011).

<sup>7</sup> Human trafficking in Florida proliferates through illegal industries such as prostitution. Chapter 796, F.S., defines prostitution as "the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses."

<sup>8</sup> See footnote 5.

<sup>9</sup> See s. 16.617, F.S.

within the Department of Legal Affairs.<sup>10</sup> Each member serves a 4-year term. The duties of the council include:

- Developing recommendations for comprehensive programs and services for victims of human trafficking to include recommendations for certification criteria for safe houses and safe foster homes.
- Making recommendations for apprehending and prosecuting traffickers and enhancing coordination of responses.
- Holding an annual statewide policy summit in conjunction with an institution of higher learning in this state.
- Work with the Department of Children and Families to create and maintain an inventory of human trafficking programs and services in each county, including, but not limited to, awareness programs and victim assistance services, which can be used to determine how to maximize existing resources and address unmet needs and emerging trends.
- Develop policy recommendations that advance the duties of the council and further the efforts to combat human trafficking in the state.

Additionally, the council is required to submit a report to the President of the Senate and the Speaker of the House of Representatives summarizing its accomplishments during the preceding fiscal year and making recommendations regarding the development and coordination of state and local law enforcement and social services responses to fight human trafficking and support victims.<sup>11</sup>

### Civil Causes of Action

Under current law, victims of human trafficking currently have a civil cause of action under s. 772.104, F.S., related to civil remedies for criminal practices. Section 772.103, F.S., provides that it is unlawful for any person:

- Who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of criminal activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- Through a pattern of criminal activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- To employ, or associate with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity or the collection of an unlawful debt.
- To conspire or endeavor to violate any of the actions listed above.

Section 772.104(2), F.S., provides a cause of action, for victims of human trafficking, where the victim has been injured by reason of any violation of the activities listed above due to sex trafficking or human trafficking. The victim's cause of action allows for damages threefold the amount gained from the sex trafficking or human trafficking and is entitled to minimum damages in the amount of \$200 and reasonable attorney's fees and court costs in the trial and appellate courts. The standard of proof for such actions is by clear and convincing evidence.

Actions brought pursuant to s. 772.104(2), F.S., by victims of human trafficking have a statute of limitations of 5 years following the conduct constituting the violation.

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<sup>10</sup> s. 16.617(1), F.S.

<sup>11</sup> s. 16.617(5), F.S.

## Civil Forfeiture

State and local law enforcement agencies may utilize the provisions of the Florida Contraband Forfeiture Act to deter and prevent the continued use of contraband articles for criminal purposes while protecting the proprietary interests of innocent owners and lienholders and to authorize such law enforcement agencies to use the proceeds collected under the Florida Contraband Forfeiture Act as supplemental funding for authorized purposes.<sup>12</sup>

A forfeiture action is commenced by seizing the subject property. The only action expressly authorized by the Contraband Forfeiture Act to initiate forfeiture is the actual seizure of the subject property. All rights to, interests in, and title to contraband articles used in violation of the provision regarding the unlawful transport, concealment, or possession of contraband articles or the acquisition of real or personal property with contraband proceeds immediately vests in the seizing law enforcement agency upon seizure.<sup>13</sup>

However, the seizing agency may not use the seized property for any purpose until the rights to, interests in, and title to the seized property are perfected in accordance with the Florida Contraband Forfeiture Act. This does not prohibit use or operation necessary for reasonable maintenance of seized property. Reasonable efforts must also be made to maintain seized property in such a manner as to minimize loss of value.

Under s. 787.06(7), F.S., any real property or personal property that was used or was intended to be used in violation of the section is subject to seizure and forfeiture in accordance with the Florida Contraband Forfeiture Act. As such, persons subject to criminal penalties under the human trafficking statute may have the property used in the course of this trafficking forfeited to a law enforcement agency as provided in s. 932.704, F.S.

## **Effects of the Bill**

The bill creates the Civil Action Against Human Trafficking Compensation Fund Act. The bill makes the following findings:

The legislature finds that to achieve the state's goals relating to human trafficking set forth in s. 787.06(1)(d), it is necessary to provide a civil cause of action for the recovery of compensatory and punitive damages and for the civil seizure and forfeiture of the personal and real property used by those who engage in the human trafficking of persons for sex or labor and those who either knowingly or through willful blindness receive profit from or otherwise receive direct or indirect economic benefits from such trafficking.

## Civil Cause of Action for Victim of Human Trafficking

The bill creates a cause of action for a victim of human trafficking to sue the trafficker who victimized him or her.

A victim may recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs in bringing the action. The bill provides for the measurement of economic damages. If the victim was forced into lawful labor, the victim is entitled to recover the fair market value of the labor or the amount realized by the trafficker, whichever is greater. A victim is also entitled to reimbursement for the time in captivity, payable at the same rate as one is paid by the state for wrongful incarceration (currently \$50,000 a year).<sup>14</sup> A victim who elects

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<sup>12</sup> s. 932.704(1), F.S.

<sup>13</sup> s. 932.704(8), F.S.

<sup>14</sup> ch. 961, F.S.

repatriation may recover those costs. Noneconomic damages are calculated the same as in a tort action.

The proof required is a preponderance of the evidence.

In addition to the damages stated above, if the victim prevails, the court must impose a \$100,000 civil penalty against the trafficker. If a law enforcement agency rescued the victim or located the property upon which the trafficking was taking place, the court must impose an additional \$50,000 penalty for the benefit of the law enforcement agency to be used in future efforts combating human trafficking. The mandatory penalties are not disclosed to the jury. The penalties are in addition to any punitive damages award.

#### Civil Cause of Action by the Statewide Council on Human Trafficking

The Statewide Council on Human Trafficking may file a cause of action on behalf of a victim of human trafficking. The procedure and measures of recovery are the same as an individual lawsuit. Where the victim is known and can be found, the recovery is to pass through the Florida Compensation Trust Fund for Survivors of Human Trafficking, created by this bill, to the victim or the victim's estate. Where the victim is unknown, the proceeds may be kept by the fund to cover administrative costs or to benefit of other victims of human trafficking.

#### Civil Forfeiture

The bill allows the council to file a civil judicial forfeiture action seeking a judgment against an owner of real or personal property that was used in the trafficking of a victim for sex or labor. An action may be filed against an owner who knowingly participated in the trafficking, and an action may be brought against an owner who, through willful blindness, used or allowed their property to be used for human trafficking. The bill defines willful blindness as:

"Willful blindness" occurs when a person has her or his suspicion aroused about a particular fact, and realizes its probability, but deliberately refrains from obtaining confirmation of it or acting on it because she or he wants to remain in ignorance, such that knowledge of the fact avoided can reasonably and fairly be imputed to the person who avoided confirming it.

The effect of this definition is that third parties may be subjected to civil forfeiture of their property for willful blindness of the human trafficking occurring on or with their property. Moreover, this willful blindness may be imputed to owners through their agents though through the concept of vicarious liability.

Forfeiture does not apply to innocent third parties with valid leases, recorded mortgages, or liens that were in existence prior to the date the civil action was filed. Forfeiture does not apply to a good faith purchaser of property for value.

The bill provides procedural framework for filing civil forfeiture actions and requires the council to make a reasonable effort to ascertain the owner of any property being seized. Filing requires a \$1000 filing fee and the posting of a \$1500 bond. The bond is payable to any claimant who prevails in the forfeiture action. Civil forfeiture proceedings under the bill take priority over claims by law enforcement agencies of the state, or other parties, under the Florida Contraband Forfeiture Act, when seeking the same property.

Where the council establishes by the preponderance of the evidence that the property was used for human trafficking, the court is required to order the property forfeited to the council. The final order of forfeiture by the court must perfect in the council right, title, and interest in and to such property, subject only to the rights and interests of bona fide lienholders.

Following an order of forfeiture, the property or the proceeds from the sale of the property must be transferred to the victim up to the extent of his or her individual damages against the trafficker. Where multiple victims were subjected to human trafficking for which the property was used for, the proceeds or property is distributed on a pro rata share basis. Where there are excess proceeds after distribution to the victims, the council is to use those proceeds for one or more of the following purposes:

- Covering expenses of the council;
- For the benefit of other victims of human trafficking; or
- For the benefit of combating human trafficking.

The bill also provides for the release of property and specific assessments of costs if the property owner or other interested person (claimant) prevails at the conclusion of the forfeiture proceeding. A prevailing claimant is not assessed any towing, storage, administrative, or maintenance costs, by the seizing agency. Moreover, prevailing claimants are entitled to:

- The release of any seized property, if the council decides not to appeal.
- Reasonable loss of value of the property.
- Any loss of income directly attributable to the seizure of the property.
- Costs assessed by the court if the council decides to appeal.
- Reasonable attorney fees and costs if the court finds the council did not proceed in good faith.

#### Limitations Period

There is no statute of limitations for the civil cause of action created by this bill, nor is there a statute of limitations on forfeiture.

#### Funding

Initial funding for the additional duties of the council is provided for in the bill, which appropriates \$153,000 in recurring funds for 3 full-time employees plus \$29,000 in non-recurring funds from the Crimes Compensation Trust Fund.

#### B. SECTION DIRECTORY:

Section 1 creates s. 787.061, F.S., relating to civil actions for human trafficking.

Section 2 provides an effective date of July 1, 2017.

## **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 bill appropriates \$153,000 in recurring expenses and \$29,000 in non-recurring expenses. These initial funds will come from the Crimes Compensation Trust Fund. The bill authorizes 3.0 FTE's.

## B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

### 1. Revenues:

The bill could have a positive fiscal impact on local government revenues. The bill provides for a civil penalty of \$50,000 to be awarded in favor of a law enforcement agency that rescued a victim or located the property upon which the abuse or exploitation of a victim occurred.

The bill could also have a negative fiscal impact on local government revenues. The council and victims of human trafficking are authorized to seek civil forfeiture of the assets used by the human trafficker outside of Florida's Forfeiture and Contraband Act. As such, assets that would otherwise be forfeited to a law enforcement agency will now go to the victim or council instead.

### 2. Expenditures:

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

## C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on victims of human trafficking who may recover in a cause of action under this bill.

The bill may have a negative fiscal impact on the private sector to the extent a party loses property because such party participates in, or through willful blindness, allows their property to be used in human trafficking.

## D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

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

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

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

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2017, the Civil Justice & Claims Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed in the following ways:

- Replacing the fund with the Statewide Council on Human Trafficking as the proper party for bringing a civil cause of action on behalf of a victim.

- Removing a cause of action against third party publishers of advertisements related to human trafficking.
- Providing the Council, on behalf of the fund or victim, is the proper plaintiff in a civil forfeiture proceeding.
- Removing the distinction between minor victims and adult victims for purposes of bringing a civil cause of action.

This analysis is drafted to the committee substitute as passed by the Civil Justice & Claims Subcommittee.