

By the Committees on Judiciary; and Criminal Justice; and
Senator Bracy

590-04114-17

2017972c2

1 A bill to be entitled
2 An act relating to victims of human trafficking;
3 creating s. 787.061, F.S.; providing a short title;
4 creating s. 787.062, F.S.; defining terms; creating s.
5 787.063, F.S.; providing legislative findings;
6 creating a civil cause of action for victims of human
7 trafficking, or for the Statewide Council on Human
8 Trafficking on their behalves, against a trafficker or
9 facilitator; providing procedures and requirements for
10 bringing a claim; requiring a court to impose a civil
11 penalty against a defendant if a victim, or the
12 council on the victim's behalf, prevails; requiring a
13 court to impose a civil penalty and award it equitably
14 to one or more law enforcement agencies under certain
15 circumstances; providing that such actions are not
16 subject to a statute of limitations; requiring the
17 Attorney General to recommend one or more educational
18 programs designed to train employees of public lodging
19 establishments in the identification and reporting of
20 suspected human trafficking; providing that the owner
21 or operator of a public lodging establishment may not
22 be held vicariously liable if certain employees
23 complete such educational programs within a specified
24 time; creating s. 787.064, F.S.; requiring the council
25 to issue an annual report to the Legislature which
26 includes specified information, by a specified date;
27 creating s. 794.11, F.S.; defining terms; authorizing
28 subpoenas in certain investigations of sexual offenses
29 involving child victims; specifying the purpose of

590-04114-17

2017972c2

30 such subpoenas; requiring a subpoena to contain
31 certain information; requiring the reimbursement of
32 subpoenaed witnesses; authorizing the recipient of the
33 subpoena to petition a court; prohibiting the
34 disclosure of the existence or contents of a subpoena
35 under certain circumstances; providing exceptions;
36 requiring certain notice to be provided in a subpoena
37 that contains a nondisclosure requirement; exempting
38 from production certain records, objects, and other
39 information; providing for the return of records,
40 objects, and other information produced; specifying
41 timeframes within which records, objects, and other
42 information must be returned; providing for service
43 and enforcement of the subpoenas; providing penalties
44 for a violation of the subpoena or nondisclosure
45 requirement; providing immunity for certain persons
46 complying with the subpoenas in certain circumstances;
47 providing for judicial review, and extensions, of such
48 nondisclosure requirement; amending s. 16.617, F.S.;
49 adding functions and duties for the council; providing
50 for administration of the trust fund by the council;
51 providing appropriations; providing an effective date.

52
53 Be It Enacted by the Legislature of the State of Florida:

54
55 Section 1. Section 787.061, Florida Statutes, is created to
56 read:

57 787.061 Short title.—Sections 787.061-787.065 may be cited
58 as the "Civil Action for Victims of Human Trafficking and

590-04114-17

2017972c2

59 Prevention of Human Trafficking Act.”

60 Section 2. Section 787.062, Florida Statutes, is created to
61 read:

62 787.062 Definitions for the Civil Action for Victims of
63 Human Trafficking and Prevention of Human Trafficking Act.—As
64 used in ss. 787.061-787.065 the term:

65 (1) “Council” means the Statewide Council on Human
66 Trafficking within the Department of Legal Affairs, as created
67 in s. 16.617.

68 (2) “Facilitator” means a person who knowingly, or in
69 willful blindness, assists or provides goods or services to a
70 trafficker which assist or enable the trafficker to carry out
71 human trafficking.

72 (3) “Human trafficking” has the same meaning as provided in
73 s. 787.06.

74 (4) “Trafficker” means any person who knowingly engages in
75 human trafficking, attempts to engage in human trafficking, or
76 benefits financially by receiving anything of value from
77 participation in a venture that has subjected a person to human
78 trafficking.

79 (5) “Trust fund” means the Trust Fund for Victims of Human
80 Trafficking and Prevention created in s. 787.0611.

81 (6) “Venture” means any group of two or more individuals
82 associated in fact, whether or not a legal entity.

83 (7) “Victim of human trafficking” means a person subjected
84 to coercion, as defined in s. 787.06, for the purpose of being
85 used in human trafficking, a child under 18 years of age
86 subjected to human trafficking, or an individual subjected to
87 human trafficking as defined by federal law.

590-04114-17

2017972c2

88 (8) "Willful blindness" occurs when a person's suspicions
89 are aroused about a particular fact and, while he or she
90 realizes its probability, he or she deliberately refrains from
91 obtaining confirmation of or acting on the fact because he or
92 she wants to remain in ignorance, such that knowledge of the
93 fact avoided can reasonably and fairly be imputed to the person
94 who avoided confirming it.

95 Section 3. Section 787.063, Florida Statutes, is created to
96 read:

97 787.063 Civil action for victims of human trafficking.—

98 (1) FINDINGS.—The Legislature finds that, to achieve the
99 state's goals relating to human trafficking set forth in s.
100 787.06(1)(d), it is necessary to provide a civil cause of action
101 for the recovery of compensatory and punitive damages.

102 (2) CIVIL CAUSE OF ACTION.—

103 (a) A victim of human trafficking has a civil cause of
104 action against the trafficker or facilitator of human
105 trafficking who victimized her or him, and may recover damages
106 for such victimization as provided in this section.

107 (b) The council, with the consent of the victim, may bring
108 a civil cause of action against a trafficker or facilitator of
109 human trafficking who victimizes a person in this state.

110 (c) If the council prevails in any action, the trust fund
111 shall hold moneys awarded to the victim for distribution to the
112 victim or her or his parent, legal guardian, or estate. However,
113 if the victim's parent or legal guardian knowingly, or through
114 willful blindness, participated in the human trafficking, such
115 person is not entitled to any distribution or benefit from the
116 trust fund. If there is no person or estate to appropriately

590-04114-17

2017972c2

117 receive the funds, they must remain in the trust fund and be
118 used for purposes of the trust fund, as described in s.
119 787.0611.

120 (d) The action may be brought in any court of competent
121 jurisdiction and the standard of proof is a preponderance of the
122 evidence.

123 (e) A victim, or the council on behalf of the victim, who
124 prevails in any such action is entitled to recover economic and
125 noneconomic damages, penalties, punitive damages, reasonable
126 attorney fees, reasonable investigative expenses, and costs.

127 1. The measure of economic damages for services or labor
128 coerced from the victim of human trafficking shall be the
129 greater of the fair market value of the labor or services
130 provided or the amount realized by the trafficker. For purposes
131 of this subparagraph, the terms "labor" and "services" have the
132 same meanings as provided in s. 787.06.

133 2. The measure of economic damages for every day that the
134 human trafficking was ongoing shall be calculated as a daily
135 amount of the compensation payable to a person under s.
136 961.06(1)(a).

137 3. Economic damages also include past and future medical
138 and mental health expenses; repatriation expenses, when a victim
139 elects repatriation; and all other reasonable costs and expenses
140 incurred by the victim in the past or estimated to be incurred
141 by the victim in the future as a result of the human
142 trafficking.

143 4. Noneconomic damages shall be calculated as in a tort
144 action.

145 (f) The remedies provided in this section are in addition

590-04114-17

2017972c2

146 to and cumulative with other legal and administrative remedies
147 available to victims of human trafficking, except that a victim
148 may not recover under both this section and s. 772.104(2).

149 (g) If a victim or the council, on behalf of the victim,
150 prevails in an action under this section, in addition to any
151 other award imposed, the court must award a civil penalty
152 against the defendant in the amount of \$100,000. This penalty is
153 in addition to, and not in lieu of, any other damage award. The
154 civil penalty must be assessed by the court and may not be
155 disclosed to the jury. Proceeds from the civil penalty must be
156 deposited into the trust fund.

157 (h) If one or more law enforcement agencies rescued the
158 victim or located the property upon which the abuse or
159 exploitation of a victim or victims had occurred, the court must
160 impose a civil penalty against the defendant in the amount of
161 \$50,000 and award the penalty to the law enforcement agencies to
162 fund future efforts to combat human trafficking. The court must
163 equitably distribute the civil penalty among the law enforcement
164 agencies.

165 (i) The court shall have specific authority to consolidate
166 civil actions for the same trafficker or facilitator for the
167 purpose of case resolution and aggregate jurisdiction.

168 (3) STATUTE OF LIMITATIONS.—There is no statute of
169 limitations for actions brought pursuant to this section.

170 (4) EDUCATIONAL PROGRAMS.—No later than January 31, 2018,
171 and periodically thereafter, the Attorney General shall consult
172 with state and national hotel and lodging associations and
173 recommend one or more educational programs designed to train
174 employees of public lodging establishments in the identification

590-04114-17

2017972c2

175 and reporting of suspected human trafficking. The owner or
176 operator of a public lodging establishment may not be held
177 vicariously liable under this section if the establishment
178 requires only those employees the establishment expects to
179 routinely interact with guests to complete one of the
180 recommended educational programs within 30 days of hiring or by
181 July 1, 2018, whichever occurs later.

182 Section 4. Section 787.064, Florida Statutes, is created to
183 read:

184 787.064 Annual Report of the Civil Action for Victims of
185 Human Trafficking and Prevention of Human Trafficking Act.—The
186 council shall issue an annual report no later than October 1 of
187 each year to the President of the Senate and the Speaker of the
188 House of Representatives detailing for the prior fiscal year all
189 of the following:

190 (1) The status of the trust fund.

191 (2) Any actions and outcomes under s. 787.063.

192 (3) Any information that demonstrates the council's
193 fulfillment of the purposes of the trust fund during the prior
194 fiscal year.

195 Section 5. Section 794.11, Florida Statutes, is created to
196 read:

197 794.11 Investigative subpoenas in certain cases involving
198 child victims.—

199 (1) DEFINITIONS.—As used in this section, the term:

200 (a) "Child" means a person younger than 18 years of age.

201 (b) "Child sexual offender" means a person required to
202 register as a sexual predator under s. 775.21 or as a sexual
203 offender under s. 943.0435 if at least one of the offenses that

590-04114-17

2017972c2

204 qualified the person for such registration requirement involved
205 a victim who was a child at the time of the offense.

206 (c) "Criminal justice agency" means a law enforcement
207 agency, court, or prosecutor in this state.

208 (d) "Sexual exploitation or abuse of a child" means a
209 criminal offense based on any conduct described in s. 39.01(70).

210 (2) AUTHORIZATION.—

211 (a) A criminal justice agency may issue in writing and
212 cause to be served a subpoena requiring the production of any
213 record, object, or other information or testimony described in
214 paragraph (b) in any investigation of:

215 1. An offense involving the sexual exploitation or abuse of
216 a child;

217 2. A sexual offense allegedly committed by a child sexual
218 offender who has not registered as required under s. 775.21 or
219 s. 943.0435; or

220 3. An offense under chapter 847 involving a child victim
221 which is not otherwise included in subparagraph 1. or
222 subparagraph 2.

223 (b) A subpoena issued under this section may require:

224 1. The production of any record, object, or other
225 information relevant to the investigation.

226 2. Testimony by the custodian of the record, object, or
227 other information concerning its production and authenticity.

228 (3) CONTENTS OF SUBPOENAS.—A subpoena issued under this
229 section must describe any record, object, or other information
230 required to be produced and prescribe a reasonable return date
231 by which the record, object, or other information can be
232 assembled and made available.

590-04114-17

2017972c2

233 (4) WITNESS EXPENSES.—Witnesses subpoenaed under this
234 section shall be reimbursed for fees and mileage at the same
235 rate at which witnesses in the courts of this state are
236 reimbursed.

237 (5) PETITIONS BEFORE RETURN DATE.—At any time before the
238 return date specified in the subpoena, the recipient of the
239 subpoena may, in the circuit court of the county in which the
240 recipient conducts business or resides, petition for an order
241 modifying or setting aside the subpoena or the requirement for
242 nondisclosure of certain information under subsection (6).

243 (6) NONDISCLOSURE.—

244 (a)1. If a subpoena issued under this section is
245 accompanied by a written certification under subparagraph 2. and
246 notice under paragraph (c), the recipient of the subpoena, and a
247 person to whom information is disclosed under subparagraph
248 (b)1., may not disclose to any person for a period of 180 days
249 the existence or contents of the subpoena.

250 2. The nondisclosure requirement in subparagraph 1. applies
251 if the criminal justice agency that issued the subpoena
252 certifies in writing that the disclosure may result in one or
253 more of the following circumstances:

254 a. Endangering a person's life or physical safety;
255 b. Encouraging a person's flight from prosecution;
256 c. Destruction of or tampering with evidence;
257 d. Intimidation of potential witnesses; or
258 e. Otherwise seriously jeopardizing an investigation or
259 unduly delaying a trial.

260 (b)1. A recipient of a subpoena may disclose information
261 subject to the nondisclosure requirement in subparagraph (a)1.

590-04114-17

2017972c2

262 to:

263 a. A person to whom disclosure is necessary in order to
264 comply with the subpoena;

265 b. An attorney in order to obtain legal advice or
266 assistance regarding the subpoena; or

267 c. Any other person as authorized by the criminal justice
268 agency that issued the subpoena.

269 2. A recipient of a subpoena who discloses to a person
270 described in subparagraph 1. information subject to the
271 nondisclosure requirement shall notify such person of the
272 nondisclosure requirement by providing the person with a copy of
273 the subpoena. A person to whom information is disclosed under
274 subparagraph 1. is subject to the nondisclosure requirement in
275 subparagraph (a)1.

276 3. At the request of the criminal justice agency that
277 issued the subpoena, a recipient of a subpoena who discloses or
278 intends to disclose to a person described in sub-subparagraph
279 1.a. or sub-subparagraph 1.b. information subject to the
280 nondisclosure requirement shall provide to the criminal justice
281 agency the identity of the person to whom such disclosure was or
282 will be made.

283 (c)1. The nondisclosure requirement imposed under paragraph
284 (a) is subject to judicial review under subsection (13).

285 2. A subpoena issued under this section, in connection with
286 which a nondisclosure requirement under paragraph (a) is
287 imposed, must include:

288 a. Notice of the nondisclosure requirement and the
289 availability of judicial review.

290 b. Notice that a violation of the nondisclosure requirement

590-04114-17

2017972c2

291 is subject to the penalties provided in paragraph (11)(b).

292 (d) The nondisclosure requirement in paragraph (a) may be
293 extended under subsection (13).

294 (7) EXCEPTIONS TO PRODUCTION.—A subpoena issued under this
295 section may not require the production of anything that is
296 protected from production under the standards applicable to a
297 subpoena duces tecum issued by a court of this state.

298 (8) RETURN OF RECORDS AND OBJECTS.—If a case or proceeding
299 resulting from the production of any record, object, or other
300 information under this section does not arise within a
301 reasonable time after such production, the criminal justice
302 agency to which it was delivered shall, upon written demand made
303 by the person producing it, return the record, object, or other
304 information to such person, unless the record was a copy and not
305 an original.

306 (9) TIME OF PRODUCTION.—A subpoena issued under this
307 section may require production of any record, object, or other
308 information as soon as possible, but the recipient of the
309 subpoena must have at least 24 hours after he or she is served
310 to produce the record, object, or other information.

311 (10) SERVICE.—A subpoena issued under this section may be
312 served as provided in chapter 48.

313 (11) ENFORCEMENT.—

314 (a) If a recipient of a subpoena under this section refuses
315 to comply with the subpoena, the criminal justice agency may
316 invoke the aid of any circuit court described in subsection (5)
317 or of the circuit court of the county in which the authorized
318 investigation is being conducted. Such court may issue an order
319 requiring the recipient of a subpoena to appear before the

590-04114-17

2017972c2

320 criminal justice agency that issued the subpoena to produce any
321 record, object, or other information or to testify concerning
322 the production and authenticity of the record, object, or other
323 information. Any failure to comply with an order under this
324 paragraph may be punished by the court as a contempt of court.
325 All process in any such case may be served in any county in
326 which such person may be found.

327 (b) A recipient of a subpoena, or a person to whom
328 information is disclosed under subparagraph(6) (b)1., who
329 knowingly violates:

330 1. A nondisclosure requirement imposed under paragraph
331 (6) (a) commits a noncriminal violation punishable as provided in
332 s. 775.083. Each person to whom a disclosure is made in
333 violation of this subparagraph constitutes a separate violation
334 subject to a separate fine.

335 2. A nondisclosure requirement ordered by the court under
336 this section may be held in contempt of court.

337 (12) IMMUNITY.—Notwithstanding any other law, any person,
338 including any officer, agent, or employee, receiving a subpoena
339 under this section who complies in good faith with the subpoena
340 and produces or discloses any record, object, or other
341 information sought is not liable in any court in this state to
342 any customer or other person for such production or disclosure.

343 (13) JUDICIAL REVIEW OF NONDISCLOSURE REQUIREMENT.—

344 (a)1.a. If a recipient of a subpoena under this section, or
345 a person to whom information is disclosed under subparagraph
346 (6) (b)1., wishes to have a court review a nondisclosure
347 requirement under subsection (6), such recipient or person may
348 notify the criminal justice agency issuing the subpoena or file

590-04114-17

2017972c2

349 a petition for judicial review in the circuit court described in
350 subsection (5).

351 b. Within 30 days after the date on which the criminal
352 justice agency receives the notification under sub-subparagraph
353 a., the criminal justice agency shall apply for an order
354 prohibiting the disclosure of the existence or contents of the
355 subpoena. An application under this sub-subparagraph may be
356 filed in the circuit court described in subsection (5) or in the
357 circuit court of the county in which the authorized
358 investigation is being conducted.

359 c. The nondisclosure requirement shall remain in effect
360 during the pendency of proceedings relating to the requirement.

361 d. A circuit court that receives a petition under sub-
362 subparagraph a. or an application under sub-subparagraph b.
363 shall rule on such petition or application as expeditiously as
364 possible.

365 2. An application for a nondisclosure order or extension
366 thereof or a response to a petition filed under this paragraph
367 must include a certification from the criminal justice agency
368 that issued the subpoena indicating that the disclosure of such
369 information may result in one or more of the circumstances
370 described in subparagraph (6) (a)2.

371 3. A circuit court shall issue a nondisclosure order or
372 extension thereof under this paragraph if it determines that
373 there is reason to believe that disclosure of such information
374 may result in one or more of the circumstances described in
375 subparagraph (6) (a)2.

376 4. Upon a showing that any of the circumstances described
377 in subparagraph (6) (a)2. continues to exist, a circuit court may

590-04114-17

2017972c2

378 issue an ex parte order extending a nondisclosure order imposed
379 under this section for an additional 180 days. There is no limit
380 on the number of nondisclosure extensions that may be granted
381 under this subparagraph.

382 (b) In all proceedings under this subsection, subject to
383 any right to an open hearing in a contempt proceeding, a circuit
384 court must close any hearing to the extent necessary to prevent
385 the unauthorized disclosure of a request for records, objects,
386 or other information made to any person under this section.
387 Petitions, filings, records, orders, certifications, and
388 subpoenas must also be kept under seal to the extent and as long
389 as necessary to prevent the unauthorized disclosure of any
390 information under this section.

391 Section 6. Paragraph (f) is added to subsection (4) of
392 section 16.617, Florida Statutes, to read:

393 16.617 Statewide Council on Human Trafficking; creation;
394 membership; duties.—

395 (4) DUTIES.—The council shall:

396 (f) Perform the functions and duties as provided in ss.
397 787.061-787.065 and administer the Trust Fund for Victims of
398 Human Trafficking and Prevention as created in s. 787.0611.

399 Section 7. For the 2017-2018 fiscal year, the sums of
400 \$153,000 in recurring funds and \$29,000 in nonrecurring funds
401 from the Crimes Compensation Trust Fund are appropriated to the
402 Department of Legal Affairs, and three full-time equivalent
403 positions are authorized, for the purpose of implementing this
404 act.

405 Section 8. This act shall take effect October 1, 2017.