

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7039 PCB CRJ 18-03 Human Trafficking
SPONSOR(S): Criminal Justice Subcommittee, Spano
TIED BILLS: **IDEN./SIM. BILLS:** SB 1502

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	10 Y, 0 N	MacNamara	Sumner
1) Justice Appropriations Subcommittee	10 Y, 0 N	Gusky	Gusky
2) Judiciary Committee	19 Y, 0 N	MacNamara	Poche

SUMMARY ANALYSIS

Human trafficking is the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploiting that person. 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. Victims of human trafficking are often arrested and charged with crimes committed at the direction of their trafficker. The resulting criminal record for these victims acts as a barrier for victims seeking employment, housing, and other necessities for a normal life.

Any person who knowingly, or in reckless disregard of the facts, engages in or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participating in a venture that has subjected a person to human trafficking commits a felony. Current law does not impose a mandatory minimum sentence for any human trafficking offense.

HB 7039 establishes a mandatory minimum sentence of 10 years for any person who engages in, attempts to engage in, or benefits from human trafficking:

- For labor or services of any child under the age of 18, including unauthorized aliens;
- Using coercion for commercial sexual activity or labor or services of an adult, including an unauthorized alien;
- For labor or services by the transfer or transport of any child under the age of 18 from outside Florida; and
- For commercial sexual activity in which any child under the age of 18, or which involves any person who is mentally defective or mentally incapacitated.

Additionally, the bill amends the definition of “adult theater” to clarify that strip clubs and similar establishments are within the scope of the Department of Business and Professional Regulation’s verification and inspection authority.

The bill also prohibits clerks from assessing a filing fee, or any other fee or costs, for victims seeking expungement of a criminal record of crimes committed while a victim of human trafficking.

The Criminal Justice Impact Conference determined that the bill will increase the need for prison beds in the five-year forecast period. It is expected that this impact can be absorbed during the forecast period within the resources currently appropriated to the Department of Corrections. See Fiscal Comments.

The bill has an indeterminate fiscal impact to the Department of Business and Professional Regulation and the clerks of circuit court.

The bill provides an effective date of July 1, 2018.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7039c.JDC

DATE: 2/27/2018

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Human Trafficking

Human trafficking is a form of modern-day slavery.¹ Human trafficking is defined as the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploiting that person.²

Human trafficking is a public health issue that impacts individuals, families, and communities. Traffickers disproportionately target at-risk populations including individuals who have experienced or been exposed to other forms of violence (child abuse and maltreatment, interpersonal violence and sexual assault, and community and gang violence) and individuals disconnected from stable support networks (runaway and homeless youth, unaccompanied minors, and persons displaced during natural disasters.)³ It is estimated that as many as 300,000 American youth are currently at risk of becoming victims of commercial sexual exploitation.⁴ The 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 worldwide are in forced labor, bonded labor, and commercial sexual servitude at any given time.⁵

Sex trafficking, one type of human trafficking, can occur in many different settings. For example, sex trafficking victims are often forced into prostitution or into work at a strip club or gentleman's club.⁶ In Florida, 429 arrests were made for human trafficking from 2014 through 2017.⁷

Survivors of human trafficking often face both criminalization and stigmatization. Trafficked persons are not always recognized or treated as victims by law enforcement and prosecutors. Despite being victims, individuals who are trafficked are often arrested and convicted of various crimes. For sex trafficking victims these crimes are frequently prostitution charges, but also include other charges such as weapons, drugs, financial crimes, and identity theft.⁸ Labor traffickers, like sex traffickers, also benefit from forcing a victim to commit illegal acts such as selling or cultivating drugs or, commonly at the U.S. border, forcing individuals to be drug mules or bring people into the country illegally.⁹ Minors who are trafficked are often charged with offenses such as truancy and running away.¹⁰

Criminal charges create high barriers for victims of human trafficking in terms of finding employment and establishing stability and independence. In 2016, the National Survivor Network published a survey of their members showing that 90% of respondents had criminal convictions.¹¹

¹ S. 787.06(1)(a), F.S.

² S. 787.06(2)(d), F.S.

³ Administration for Children & Families, *Fact Sheet: Human Trafficking*, available at: https://www.acf.hhs.gov/sites/default/files/otip/fact_sheet_human_trafficking_fy18.pdf.

⁴ *OJP Fact Sheet*, Office of Justice Programs, U.S. Department of Justice, December 2011, available at: http://ojp.gov/newsroom/factsheets/ojps_humantrafficking.html.

⁵ 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>

⁶ American Bar Association, *Trafficking FAQs*, available at:

https://www.americanbar.org/groups/human_rights/projects/task_force_human_trafficking/faqs.html.

⁷ Email from Ronald Draa, Florida Department of Law Enforcement (December 4, 2017, 9:32am) (on file with Judiciary Committee).

⁸ American Bar Association, *Post-Conviction Advocacy for Survivors of Human Trafficking: A Guide for Attorneys*, p. 4-5, available at: https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/SRP/practice-guide.authcheckdam.pdf

⁹ *Id.*

¹⁰ *Id.*

¹¹ National Survivors Network, *Member Survey On the Impact of Criminal Arrest and Detention on Survivors of Human Trafficking* (January 2016), available at: <http://nationalsurvivornetwork.org>.

Criminal Punishment Code

The Criminal Punishment Code (Code) applies to all felony offenses, except capital felonies committed on or after October 1, 1998.¹² Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10), either by being specifically listed in the offense severity ranking chart¹³ or by default.¹⁴ Judges must use the Code worksheet to compute a sentence score for each felony offender.¹⁵

Sentence points are assigned and accrue based on the level ranking assigned to the primary offense, additional offenses and prior offenses.¹⁶ Sentence points increase as the offense severity level increases from Level 1 (least severe) to Level 10 (most severe). Sentence points are also added for victim injury, and increase based on the type of injury and severity.¹⁷ Sentence points may also be added or multiplied for other factors including possession of a firearm or the commission of certain offenses, such as drug trafficking.¹⁸

If total sentence points equal or are less than 44 points, the lowest permissible sentence is any nonstate prison sanction, unless the court determines that a prison sentence is appropriate. If the total points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.¹⁹ Absent mitigation,²⁰ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty under s. 775.082, F.S.

Penalties for Human Trafficking Offenses

Current law criminalizes the following activities for any person who knowingly, or in reckless disregard of the facts, engages in or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participating in a venture that has subjected a person to human trafficking:

- For labor or services of any child under the age of 18 (first degree felony ranked in Level 8)²¹
- For labor or services of an adult (first degree felony ranked in Level 7)²²
- Using coercion for commercial sexual activity of an adult (first degree felony ranked in Level 8)²³
- For labor or services of any child under the age of 18 who is an unauthorized alien (first degree felony ranked in Level 9)²⁴
- Using coercion for labor or services of an adult who is an unauthorized alien (first degree felony ranked in Level 8)²⁵
- Using coercion for commercial sexual activity of an adult who is an unauthorized alien (first degree felony ranked in Level 9)²⁶
- For labor or services by transferring or transporting any child from outside of the state into Florida (first degree felony ranked in Level 8)²⁷

¹² S. 921.002, F.S.

¹³ S. 921.0022, F.S.

¹⁴ S. 921.0023, F.S.

¹⁵ S. 921.0024, F.S.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ S. 921.0022(2), F.S.

²⁰ The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

²¹ S. 787.06(3)(a)1., F.S.

²² S. 787.06(3)(a)2., F.S.

²³ S. 787.06(3)(b), F.S.

²⁴ S. 787.06(3)(c)1., F.S.

²⁵ S. 787.06(3)(c)2., F.S.

²⁶ S. 787.06(3)(d), F.S.

²⁷ S. 787.06(3)(e)1., F.S.

- For labor or services by transferring or transporting an adult from outside of the state into Florida (first degree felony ranked in Level 7)²⁸
- For commercial sexual activity by transferring or transporting any child under the age of 18 from outside of the state into Florida (first degree felony punishable by imprisonment for life ranked in Level 9)²⁹
- Using coercion for commercial sexual activity by transferring or transporting an adult from outside of the state into Florida (first degree felony ranked Level 8)³⁰
- For commercial sexual activity involving any child under the age of 18 or any person who is mentally defective or mentally incapacitated (life felony ranked in Level 10)³¹

Absent mitigation, all human trafficking offenses would require a prison sentence under the Code. A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. A life felony is punishable by up to life imprisonment and a \$15,000 fine.

In Fiscal Year 2016-2017, 23 offenders were sentenced for a human trafficking offense and 22 of those received a state prison sentence. The average sentence length was 105.3 months (8.8 years).³²

Effect of Proposed Changes

Mandatory Minimum Sentences

Mandatory minimum terms of imprisonment limit judicial discretion in sentencing under the Code: If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence.³³ As previously noted, the sentencing range under the Code is generally the scored lowest permissible sentence up to and including the statutory maximum penalty.

However, if there is a mandatory minimum sentence that is longer than the scored lowest permissible sentence, the sentencing range is narrowed to the mandatory minimum sentence up to an including the statutory maximum penalty. Currently, no human trafficking offenses impose a mandatory minimum sentence.

HB 7039 establishes a 10-year mandatory minimum sentence of imprisonment for any person who engages in, attempts to engage in, or benefits from human trafficking:

- For labor or services of any child under the age of 18, including unauthorized aliens,
- Using coercion for commercial sexual activity or labor or services of an adult, including an unauthorized alien,
- For labor or services who does so by the transfer or transport of any child under the age of 18 from outside this state to within the state, and
- For commercial sexual activity in which any child under the age of 18, or which involves any person who is mentally defective or mentally incapacitated.³⁴

The bill sets the minimum sentence that a judge must impose in a conviction for the enumerated crimes. However, the judge retains the discretion to impose a greater sentence, pursuant to relevant law.

²⁸ S. 787.06(3)(e)2., F.S.

²⁹ S. 787.06(3)(f)1., F.S.

³⁰ S. 787.06(3)(f)2., F.S.

³¹ S. 787.06(3)(g), F.S.

³² Email from Ronald Draa, Florida Department of Law Enforcement (December 8, 2017, 8:51am) (on file with Judiciary Committee); Email from Matthew Hasbrouck, Office of Economic & Demographic Research (February 2, 2018) (on file with Judiciary Committee).

³³ Fla. R. Crim. P. 3.704(d)(26).

³⁴ Current law provides that s. 787.06(3)(g), F.S., is a life felony. However, s. 775.082(3)(a)6, F.S., related to penalties and sentencing structure, uses the term “may” when providing sentencing instructions for that specific crime. As such, the bill imposes a mandatory minimum in the event a court interprets a statute to mean that a life sentence is not mandatory.

Department of Business and Professional Regulation's Inspection Authority

The Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating certain businesses and professions under current law. DBPR and law enforcement agencies are required to obtain, and verify, proof of age and identification for employees or independent contractors of "adult theaters" as defined in s. 847.001(2)(b), F.S.³⁵ Furthermore, DBPR and its agents have the authority to enter an adult theater during operating hours, unannounced and without prior notice, to inspect and have access to age verification documents and other records kept on file by the adult theater.

HB 7039 amends the definition of "adult theater" as used in ch. 847, F.S., to include any business that features a person who engages in specific sexual activities for the observation by a patron, and which restricts or purports to restrict admission to adults only. This language would specifically include "strip clubs" and similar establishments within the scope of the DBPR's verification and inspection authority.

Human Trafficking Victim Criminal Record Expunction

Section 943.0583, F.S., authorizes a victim of human trafficking to petition the court for the expunction of a criminal history record relating to an offense committed while he or she was a victim of human trafficking. A "victim of human trafficking" is defined as a person subjected to coercion for the purpose of being used in human trafficking, a child under 18 years of age who is a victim of human trafficking, or an individual subject to human trafficking as defined by federal law.³⁶

To receive the expunction, a victim of human trafficking must petition the court of original jurisdiction over the crime sought to be expunged.³⁷ A petition must be initiated with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking.³⁸ The petition must include:

- The petitioner's sworn statement attesting that the petitioner is eligible for expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or seal pending before any other court; and
- Official documentation of the petitioner's status as a victim of human trafficking, if any exists.³⁹

A determination of a petitioner's status as a human trafficking victim without official documentation must be made by a showing of clear and convincing evidence.⁴⁰ If a court grants an expunction, criminal justice agencies with custody of the expunged record, except FDLE, must physically destroy the record.⁴¹ Persons who have had their human trafficking criminal history records expunged may lawfully deny or fail to acknowledge the arrests that were expunged, unless they are a candidate for employment with a criminal justice agency or is a defendant in a criminal prosecution.⁴²

HB 7039 prohibits a clerk from assessing a filing or copy fee under s. 28.24, F.S., or as otherwise provided for under law, for victims of human trafficking seeking criminal record expungement. Current FDLE practice similarly waives the department's \$75 expunction certificate fee for victims of human trafficking.

³⁵ S. 450.045, F.S.

³⁶ S. 943.0583(1)(c), F.S.

³⁷ S. 943.0583(2), F.S.

³⁸ S. 943.0583(4), F.S.

³⁹ S. 943.0583(6), F.S.

⁴⁰ S. 943.0583(5), F.S.

⁴¹ S. 943.0583(8)(a), F.S. Records retained by FDLE are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the state Constitution, except that the record must be made available to criminal justice agencies for their respective criminal justice purposes. S. 943.0583(10)(a), F.S.

⁴² S. 943.0583(8)(b), F.S.

Reenactments

Lastly, the bill reenacts ss. 402.82, 450.021, 450.045, 943.0582, 943.0585, 943.059, and 961.06, F.S., to give effect to the changes made in the bill.

The effective date of the bill is July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 787.06, F.S., relating to human trafficking.

Section 2: Amends s. 847.001, F.S., relating to definitions.

Section 3: Amends s. 943.0583, F.S., relating to human trafficking victim expunction.

Section 4: Reenacts s. 402.82, F.S., relating to electronic benefits transfer program.

Section 5: Reenacts s. 450.021, F.S., relating to minimum age; general.

Section 6: Reenacts s. 450.045, F.S., relating to proof of identity and age; posting of notices.

Section 7: Reenacts s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.

Section 8: Reenacts s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 9: Reenacts s. 943.059, F.S., relating to court-ordered sealing of criminal history records.

Section 10: Reenacts s. 961.06, F.S., relating to compensation for wrongful incarceration.

Section 11: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments. Additionally, the DBPR may see an increase in workload to inspect “strip clubs” and other establishments now specifically included in the definition of “adult theater.”

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an indeterminate, but expected to be insignificant, impact on local government revenues. Court clerks are prohibited from assessing filing and copy fees when expunging the criminal record of a human trafficking victim.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

In Fiscal Year 2016-2017, 23 offenders were sentenced for a human trafficking offense and 22 of those received a state prison sentence. The average sentence length was 105.3 months (8.8 years).

The Criminal Justice Impact Conference considered this bill on January 29, 2018, and determined that the bill will increase the need for prison beds in the five year forecast period, as follows:

Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	Annual Operating Costs
2018-2019	1	1	\$2,886
2019-2020	2	1	\$8,657
2020-2021	4	2	\$17,313
2021-2022	8	4	\$34,626
2022-2023	13	5	\$60,596
Total	13	13	\$124,077

It is expected that this impact can be absorbed during the forecast period within the resources currently appropriated to the Department of Corrections.⁴³

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁴³ Criminal Justice Impact Conference, *HB 7039 Analysis*, available at: <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB7039.pdf>.