

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.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/CS/SB 540

INTRODUCER: Community Affairs Committee; Criminal Justice Committee; and Senators Book and Berman

SUBJECT: Human Trafficking

DATE: March 14, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Storch</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Peacock</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 540 requires the creation and implementation of human trafficking awareness training for certain employees of public lodging and massage establishments and law enforcement officers.

Additionally, the bill creates the Soliciting for Prostitution Public Database (Database) and requires certain criminal history records to be included in the Database.

The bill also creates a direct-support organization (DSO) that will provide assistance, funding, and support to the Statewide Council on Human Trafficking. The bill provides that the DSO is repealed October 1, 2024, unless reviewed and saved from repeal by the Legislature.

The bill also provides that a victim of human trafficking will be eligible to petition for the expunction of his or her criminal history record relating to the offense of kidnapping that resulted from the arrest or filing of charges that was committed or reported to have been committed as part of the human trafficking scheme of which he or she was a victim.

The implementation of the training required by the bill is expected to have a fiscal impact on public lodging establishments, massage establishments, and the Florida Department of Law Enforcement (FDLE). Additionally, the FDLE is expected to incur costs associated with the administration of the Database. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

II. Present Situation:

Human Trafficking

Human trafficking is a form of modern-day slavery. Young children, teenagers, and adults are all victims of human trafficking, who are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.¹ Human trafficking is the third-largest international crime industry, generating a profit of an estimated \$32 billion every year.² In 2016, there were an estimated 40.3 million victims of human trafficking.³

From 2007-2017, there were 40,987 human trafficking cases reported to the National Human Trafficking Hotline (Hotline). In 2017, the Hotline and BeFree Textline recorded a total of 8,759 human trafficking cases in the U.S. alone, which represented a 13 percent jump in the number of identified human trafficking cases from the year prior.⁴ The Hotline receives an average of 150 calls per day.⁵

Forced labor and sex trafficking are the most common types of human trafficking. Labor trafficking is “all work or service which is extracted from any person under the threat of penalty and for which the person has not offered himself or herself voluntarily.”⁶ Sex trafficking “occurs when someone uses force, fraud or coercion to cause a commercial sex act with an adult or causes a minor to commit a commercial sex act.”⁷ Sex trafficking accounted for 6,244 of the reported cases of human trafficking in 2017.⁸

Traffickers coerce victims into sex trafficking in numerous ways. Some victims may be forced into prostitution by an intimate partner while others may be recruited with a false job offer. Fake massage businesses, truck stops, and hotels and motels are all venues used in sex trafficking operations.⁹

In an effort to combat human trafficking in the United States, Congress passed the Trafficking Victims Protection Act (Act) in 2000 which established several methods of prosecuting

¹ Section 787.06(1)(a), F.S.

² DoSomething.org, *11 Facts About Human Trafficking*, available at <https://www.dosomething.org/us/facts/11-facts-about-human-trafficking> (last visited February 13, 2019).

³ International Labour Organization, *Forced labour, modern slavery and human trafficking*, available at <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm> (last visited February 13, 2019).

⁴ Polaris, *Growing Awareness. Growing Impact. 2017 Statistics from the National Human Trafficking Hotline and BeFree Textline*, available at <http://polarisproject.org/sites/default/files/2017NHTHStats%20%281%29.pdf> (last visited February 13, 2019).

⁵ Polaris, *The Facts*, available at <https://polarisproject.org/human-trafficking/facts> (last visited February 13, 2019).

⁶ Polaris, *What is forced labour, modern slavery and human trafficking*, available at <http://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm> (last visited February 13, 2019).

⁷ SharedHope International, *What is Sex Trafficking*, available at <https://sharedhope.org/the-problem/what-is-sex-trafficking/> (last visited February 13, 2019).

⁸ *Supra* n. 4.

⁹ Polaris, *Sex Trafficking*, available at <https://polarisproject.org/human-trafficking/sex-trafficking> (last visited February 13, 2019).

traffickers, preventing human trafficking, and protecting victims and survivors of trafficking. The Act contained severe penalties and mandated restitution for victims of human trafficking.¹⁰

Human Trafficking in Florida

Florida ranks third in the nation for reported cases of human trafficking.¹¹ From January through June of 2018, the Hotline had 367 human trafficking cases reported in Florida.¹² Children are often those targeted in trafficking operations, with 12-14 being the average age that a trafficked victim is first used for commercial sex.¹³

Florida law defines “human trafficking” to mean the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person.¹⁴ In Florida, any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking commits the crime of human trafficking.¹⁵ Such an offense is punishable as a first degree felony,¹⁶ unless the person being sex trafficked is a child under the age of 18, mentally defective, or mentally incapacitated, then such an offense is punishable as a life felony.¹⁷

The number of human trafficking cases listed in reports may not accurately reflect the number of actual cases of human trafficking due to the fact that many traffickers are prosecuted for other crimes.¹⁸ Additionally, prosecutors often have difficulty proving the relationship at issue is that of human trafficking or when dealing with a victim who might be unwilling to testify against his or her trafficker in court.¹⁹

Human trafficking cases are often hidden operations that require law enforcement agencies to engage in intricate investigations. In November 2018, an investigation in Polk County led to the arrest of 103 people for charges including prostitution and human trafficking.²⁰ Similarly, in January 2019, a two month-long investigation led to the arrest of a 36-year-old male in

¹⁰ Pub. L. No. 106-386 (2000).

¹¹ National Human Trafficking Hotline, *Hotline Statistics*, available at <https://humantraffickinghotline.org/states> (last visited February 13, 2019).

¹² National Human Trafficking Hotline, *Florida: Statistics*, available at <https://humantraffickinghotline.org/state/florida> (last visited February 13, 2019).

¹³ Statewide Council on Human Trafficking, *Statewide Council on Human Trafficking Annual Reports*, available at <http://myfloridalegal.com/pages.nsf/Main/8AEA5858B1253D0D85257D34005AFA72> (last visited February 13, 2019).

¹⁴ Section 787.06(2)(d), F.S.

¹⁵ Section 787.06(3), F.S.

¹⁶ A first degree felony is punishable by a state prison term not exceeding 30 years, a fine not exceeding \$10,000, or both. Sections 775.082 and 775.083, F.S.

¹⁷ Section 787.06(3)(a)-(g), F.S. A life felony is punishable by a state prison term for life, by a term of imprisonment not exceeding 40 years, a fine not exceeding \$15,000, or both. Sections 775.082 and 775.083, F.S.

¹⁸ Nada Hassanein, *Preying on the vulnerable: Human trafficking prevalent yet elusive in the Big Bend*, Tallahassee Democrat, (June 27, 2018) available at <https://www.tallahassee.com/story/news/2019/01/27/preying-vulnerable-human-trafficking-alive-and-well-big-bend/2648630002/> (last visited February 13, 2019).

¹⁹ *Id.*

²⁰ Daniel Dahm and Brianna Volz, *Orlando-area doctor among 103 arrested in Polk County sex sting, sheriff says*, ClickOrlando.com, (December 3, 2018) available at <https://www.clickorlando.com/news/103-arrested-in-polk-county-sex-sting> (last visited February 13, 2019).

Tallahassee on prostitution and sex trafficking charges involving a 14-year old girl. At the time of his arrest, the male was already facing charges for sex trafficking a child in 2014.²¹

Human Trafficking in Public Lodging Establishments

The Division of Hotels and Restaurants (Division) is a division within the Department of Business and Professional Regulation (DBPR) that licenses, inspects, and regulates public lodging and food service establishments pursuant to ch. 509, F.S.²² The term “public lodging establishment” includes both transient²³ and nontransient²⁴ public lodging establishments. There are currently 44,903 public lodging establishments that are licensed by the Division.²⁵ The following are classified as public lodging establishments:²⁶

- Hotel;
- Motel;
- Vacation rental;
- Nontransient apartment;
- Transient apartment;
- Bed and breakfast inn; and
- Timeshare project.²⁷

Public lodging establishments, such as hotels and motels, can be attractive locations for human traffickers, due to the privacy and anonymity afforded.²⁸ Also, trafficking operations can maintain secrecy in such establishments due to the lack of facility maintenance or upkeep expenses.²⁹

Sex trafficking operations are often set up in public lodging establishments via online advertising, without the establishment operator’s knowledge.³⁰ The use of websites to communicate and arrange meeting times and locations enables those involved in the operation to

²¹ WTXL, *Human trafficking suspect accused of sex-trafficking child in Tallahassee*, (January 26, 2019) available at http://www.wtxl.com/news/human-trafficking-suspect-accused-of-sex-trafficking-child-in-tallahassee/article_9748879c-21a4-11e9-b768-5bb68f906ecc.html (last visited February 13, 2019).

²² Sections 509.013 and 509.032, F.S.

²³ “Transient public lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. Section 509.013(4)(a)1., F.S.

²⁴ “Nontransient public lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month. Section 509.013(4)(a)2., F.S.

²⁵ Department of Business and Professional Regulation, *Division of Hotels & Restaurants Annual Report 2017-18*, available at http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2017_18.pdf (last visited February 19, 2019).

²⁶ Section 509.242(1)(a)-(g), F.S., sets out criteria that must be met in order for an establishment to be classified as a public lodging establishment pursuant to ch. 509, F.S.

²⁷ *Id.*

²⁸ Department of Homeland Security, *Human Trafficking and the Hospitality Industry*, (July 2018) pg. 16, available at <https://www.dhs.gov/blue-campaign/hospitalityindustry> (last visited February 12, 2019).

²⁹ National Human Trafficking Hotline, *Hotel/Motel-Based*, available at <https://humantraffickinghotline.org/sex-trafficking-venuesindustries/hotelmotel-based> (last visited February 13, 2019).

³⁰ Division of Hotels and Restaurants, *Human Trafficking Information Sheet*, (March 22, 2016) available at http://www.myfloridalicense.com/dbpr/hr/forms/documents/5022_104.pdf (last visited February 12, 2019).

remain anonymous.³¹ From December 2007 to December 2017, the Hotline recorded 3,596 cases of human trafficking involving a hotel or motel. Additionally, 75 percent of human trafficking survivors reported coming into contact with hotels at some point while being trafficked.³²

The Division has emphasized the importance in educating staff at public lodging establishments on signs of trafficking activity. The following are ways to identify a victim of human trafficking:

- Signs of physical abuse or malnourishment;
- Person seems coached or controlled;
- Victim rarely left alone;
- Suspicious tattoos or branding on victim;
- Living conditions unsuitable;
- Victim demeaned or treated aggressively;
- Accompanied by older male;
- Avoids interaction with others;
- “Do not Disturb” sign used constantly;
- Receives lots of visitors;
- Pays for room with cash;
- Dresses inappropriately or provocatively;
- Few personal belongings;
- Refuses cleaning services;
- Room smells of bodily fluids and musk;
- Lots of cash in room;
- Alcohol and/or drugs in room; and
- Room monitored outside or in hallway.³³

In an effort to deter traffickers from utilizing public lodging establishments in their operations, states have begun passing legislation. In 2016, Connecticut passed a law³⁴ and became the first state to require hospitality workers to be trained to detect and report human trafficking when they suspect such activity is going on at their place of employment. The training teaches workers about sex and labor trafficking, along with how to deter traffickers and help victims connect with services.³⁵ Additionally, Minnesota passed a law in 2018 that requires sex trafficking prevention training for all hotels and motels in the state.³⁶ The training requires all owners, managers, and

³¹ National Human Trafficking Hotline, *Hotel/Motel-Based*, available at <https://humantraffickinghotline.org/sex-trafficking-venuesindustries/hotelmotel-based> (last visited February 13, 2019).

³² Polaris, *On-Ramps, Intersections, and Exit Routes: A Roadmap for Systems and Industries to Prevent and Disrupt Human Trafficking*, (July 2018) available at <https://polarisproject.org/sites/default/files/A%20Roadmap%20for%20Systems%20and%20Industries%20to%20Prevent%20and%20Disrupt%20Human%20Trafficking%20-%20Hotels%20and%20Motels.pdf> (last visited February 12, 2019).

³³ Division of Hotels and Restaurants, *Human Trafficking Information Sheet*, (March 22, 2016) available at http://www.myfloridalicense.com/dbpr/hr/forms/documents/5022_104.pdf (last visited February 12, 2019).

³⁴ Public Act No. 16-71, State of Connecticut (Substitute HB 5621) effective October 1, 2016.

³⁵ Susan Haigh, *Hotel Employees Get Training to Spot Human Trafficking*, Skift, (June 25, 2017) available at <https://skift.com/2017/06/25/hotel-employees-get-training-to-spot-human-trafficking/> (last visited February 12, 2019).

³⁶ 90th Legislature, State of Minnesota (SF 3367) effective August 1, 2018.

employees who work on site to be trained in identifying sex trafficking in their establishments and knowing how to respond.³⁷

Human Trafficking in Massage Establishments

The Department of Health (DOH), Division of Medical Quality Assurance, Board of Massage Therapy (Board), licenses and regulates massage establishments³⁸ and massage therapists³⁹ pursuant to ch. 480, F.S.⁴⁰ There are currently 8,659 active massage establishments and 32,387 in-state active massage therapists that are licensed by the Board.⁴¹ Sexual misconduct in the practice of massage therapy is prohibited.⁴²

Sex trafficking operations are often set up in fake massage businesses claiming to offer legitimate services, such as massage, acupuncture, and other therapeutic, health, and spa services.⁴³ Common characteristics of these fake massage businesses that help them to appear like legitimate businesses include:

- Operating out of commercial spaces, such as strip malls,⁴⁴ office buildings, or medical complexes;
- Advertising in mainstream public venues, such as major newspapers and magazines, well-known online classified sites like Craigslist, and the Yellow Pages;
- Paying rent to legitimate landlords and paying taxes to the government;
- Offering a legal service, such as a massage;
- Displaying and utilizing items commonly used in therapeutic massage businesses, such as massage tables, saunas, and health related posters; and
- Acquiring proper business occupancy permits and licensure.⁴⁵

The National Human Trafficking Hotline notes that illicit spa/massage business is one of the top venues for sex trafficking.⁴⁶

³⁷ Minnesota Department of Health, *Sex Trafficking Prevention and Response Training for the Minnesota Lodging Industry*, available at <http://www.health.state.mn.us/hoteltrafficking> (last visited February 12, 2019).

³⁸ Section 480.043, F.S.

³⁹ Section 480.041, F.S.

⁴⁰ Also, see ch. 456 (Health Professions and Occupations: General Provisions), F.S.

⁴¹ Department of Health, *Division of Medical Quality Assurance, Annual Report & Long-Range Plan Fiscal Year 2017-18*, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/annual-report-1718.pdf> (last visited March 13, 2019).

⁴² Section 480.0485, F.S.

⁴³ National Human Trafficking Hotline, *Fake Massage Businesses in the United States*, available at <https://humantraffickinghotline.org/sites/default/files/Fake%20Massage%20Businesses%20AAG.pdf> (last visited March 13, 2019).

⁴⁴ Robert Kraft, owner of the New England Patriots, was recently charged with two counts of soliciting sex at a strip mall spa in Jupiter, Florida. The charges were part of a broad investigation into prostitution and suspected human trafficking in day spas and massage parlors in South Florida. See New York Times, *Patriots Owner Robert Kraft Charged in Florida Prostitution Investigation* (February 22, 2019), available at <https://www.nytimes.com/2019/02/22/sports/robert-kraft-jupiter-orchids-arrest.html> (last visited March 13, 2019).

⁴⁵ See *supra* note ____.

⁴⁶ National Human Trafficking Hotline, *Hotline Statistics*, available at <https://humantraffickinghotline.org/states> (last visited March 13, 2019).

Human Trafficking Expunction of Criminal History Record

Florida law makes adult criminal history records accessible to the public unless the record has been sealed or expunged.⁴⁷ Sealed records are placed under highly restricted access, while expunged records are removed from record systems and destroyed.⁴⁸

Section 943.0583, F.S., establishes the process available to a victim of human trafficking⁴⁹ who is seeking to have his or her criminal history record expunged. A “victim of human trafficking” means a person subjected to coercion⁵⁰ for the purpose of being used in human trafficking, a child younger than 18 years of age who is subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.⁵¹

A victim of human trafficking is permitted to petition for the expunction of his or her criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed as part of the human trafficking scheme of which he or she was a victim. The expunction process is applicable to violations including, but not limited to, those listed under chs. 796⁵² and 847, F.S.,⁵³ without regard to the disposition of the arrest or of any charges.⁵⁴

However, this expunction process is not allowed if a person has committed one of the following enumerated offenses:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;

⁴⁷ Florida Department of Law Enforcement, *Seal and Expunge Process*, available at <http://www.fdle.state.fl.us/Seal-and-Expunge-Process/Seal-and-Expunge-Home.aspx> (last visited February 13, 2019). See s. 943.053, F.S.

⁴⁸ “Expunction of a criminal history record” is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order, except that criminal history records in the custody of the Florida Department of Law Enforcement (FDLE) must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction. Section 943.045(16), F.S.

⁴⁹ Human trafficking has the same meaning as provided in s. 787.06(2)(d), F.S.

⁵⁰ “Coercion” means using or threatening to use physical force against any person; restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will; using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined; destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person; causing or threatening to cause financial harm to any person; enticing or luring any person by fraud or deceit; or providing a controlled substance as outlined in s. 893.03, F.S., to any person for the purpose of exploitation of that person. Section 787.06(2)(a)1.-7., F.S.

⁵¹ Section 943.0583(1)(c), F.S.

⁵² Ch. 796, F.S., covers prostitution and other related acts.

⁵³ Ch. 847, F.S., covers obscenity and other related acts.

⁵⁴ Section 943.0583(3), F.S.

- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery; or
- Aggravated stalking.⁵⁵

Prostitution and Other Prohibited Acts

Prostitution is prohibited throughout the United States, with the exception of a few counties in Nevada. Broadly defined, it involves the exchange of sexual activity for money. While laws relating to prostitution vary across jurisdictions, many are often closely related to laws concerning human trafficking.⁵⁶

Current law in Florida defines prostitution as the giving or receiving of the body for sexual activity for hire.⁵⁷ Prostitution rings are often hidden operations. As a result, police officers go undercover in an effort to conduct prostitution stings. In the City of Cocoa, six suspects were arrested in January 2019 after an undercover police officer who was posing as a prostitute was approached by the individuals who subsequently agreed to pay the officer for the services of a prostitute.⁵⁸

Another tool commonly employed by those engaging in prostitution is the Internet, which is utilized similarly in human trafficking operations. Thus, law enforcement agencies use the Internet to attempt to crack down on prostitution activity. In January 2019, four people were arrested in Tallahassee in conjunction with an undercover prostitution operation that was aimed at reducing street level prostitution in the capital city. After an undercover police officer contacted the suspects through an online advertisement that had indicators of being associated with prostitution activity and met with each suspect individually at an undisclosed hotel, the officer placed each of them under arrest.⁵⁹

Section 796.07(2)(f), F.S., prohibits the solicitation, inducement, enticement, or procurement of another to commit prostitution, lewdness, or assignment.⁶⁰ Those terms are defined in the following ways:

- “Lewdness” means any indecent or obscene act; and

⁵⁵ Sections 943.0583(3) and 775.084(1)(b)1., F.S.

⁵⁶ Justia, *Prostitution*, available at <https://www.justia.com/criminal/offenses/sex-crimes/prostitution/> (last visited February 13, 2019).

⁵⁷ This definition excludes sexual activity between spouses. Section 796.07(1)(a), F.S.

⁵⁸ Caryn Shaffer, *Six arrested in Cocoa police operation targeting prostitution*, Florida Today, (January 28, 2019) available at <https://www.floridatoday.com/story/news/crime/2019/01/28/six-arrested-cocoa-after-soliciting-undercover-cop-disguised-prostitute/2706115002/> (last visited February 13, 2019).

⁵⁹ WTXL, *Four arrested in undercover prostitution sting in Tallahassee*, (January 14, 2019) available at http://www.wtxl.com/news/four-arrested-in-undercover-prostitution-sting-in-tallahassee/article_47c5602a-182e-11e9-aa98-0bf1f95703cb.html (last visited February 13, 2019).

⁶⁰ Section 796.07(2)(f), F.S.

- “Assignment” means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.⁶¹

A person who violates s. 796.07(2)(f), F.S., commits:

- A misdemeanor of the first degree⁶² for a first violation;
- A felony of the third degree⁶³ for a second violation; and
- A felony of the second degree⁶⁴ for a third or subsequent violation.⁶⁵

Statewide Council on Human Trafficking

In 2014, the Statewide Council on Human Trafficking was created within the Department of Legal Affairs.⁶⁶ The purpose of the council is to enhance the development and coordination of state and local law enforcement and social services responses to fight commercial sexual exploitation as a form of human trafficking and to support victims.⁶⁷ The fifteen member council is chaired by the Attorney General.⁶⁸ The council’s duties include:

- Developing recommendations for comprehensive programs and services for victims of human trafficking, including 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 with an institution of higher learning;
- Working with the Department of Children and Families to create and maintain an inventory of human trafficking programs and services in each county; and
- Developing policy recommendations that advance the duties of the council and further the efforts to combat human trafficking in Florida.⁶⁹

Direct-Support Organizations

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily-created private entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The purpose and functions of a CSO or DSO are prescribed by its enacting statute and, for most, by a written contract with the agency the CSO or DSO was created to support.

⁶¹ Section 796.07(1)(b) and (c), F.S.

⁶² A first degree misdemeanor is punishable by a state prison term not exceeding 1 year, a fine not exceeding \$1,000, or both. Sections 775.082 and 775.083, F.S.

⁶³ A third degree felony is punishable by a state prison term not exceeding 5 years, a fine not exceeding \$5,000, or both. Sections 775.082 and 775.083, F.S.

⁶⁴ A second degree felony is punishable by a state prison term not exceeding 15 years, a fine not exceeding \$10,000, or both. Sections 775.082 and 775.083, F.S.

⁶⁵ Section 796.07(5)(a)1.-3., F.S.

⁶⁶ Ch. 2014-161, s. 9, Laws of Fla. *Also, see* Florida Office of the Attorney General, Statewide Council on Human Trafficking, available at <http://myfloridalegal.com/pages.nsf/Main/8AEA5858B1253D0D85257D34005AFA72> (last visited on March 13, 2019).

⁶⁷ Section 16.617(1), F.S.

⁶⁸ Section 16.617(2), F.S.

⁶⁹ Section 16.617(4), F.S.

Section 20.058, F.S., establishes the rules and procedures that a CSO or DSO must follow to remain in compliance. By August 1 of each year, a CSO or DSO must submit the following information to the agency it was created, approved, or is administered by:

- The name, mailing address, phone number, and website of the organization;
- The statutory authority or executive order pursuant to which the organization was created;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the plans of the organization for the next three fiscal years;
- A copy of the organization's code of ethics; and
- A copy of the organization's most recent tax exemption form.⁷⁰

Each agency receiving such information from a CSO or DSO must make it available to the public through the agency's website. By August 15 of each year, each agency must submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability with the information provided and must include a recommendation to continue, terminate, or modify the agency's association with each CSO or DSO in the report. Furthermore, any contract between an agency and a CSO or DSO must be contingent upon the timely submission and posting of the information listed above. The contract must also provide for the cessation of operations and the reversion of state funds held by the CSO or DSO in the event that the statute authorizing the creation of the CSO or DSO is repealed, the contract is terminated, or the organization is dissolved. If an organization fails to submit the required information for two consecutive years, the agency head must terminate any contract between the agency and the CSO or DSO.⁷¹

Additionally, each CSO or DSO with annual expenditures in excess of \$100,000, created or authorized pursuant to law, and created, approved, or administered by a state agency, must provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant. The audit must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency responsible for the creation, administration, or approval of the CSO or DSO.⁷²

Laws creating or authorizing a CSO or DSO repeal on October 1 of the fifth year after enactment, unless reviewed and saved from repeal by the Legislature.⁷³

III. Effect of Proposed Changes:

Human Trafficking Training

Public Lodging Establishments (Section 3, creating s. 509.096, F.S.)

The bill requires a public lodging establishment to create and implement human trafficking awareness training and policies for employees of the establishment who perform housekeeping duties in the rental units or who work at the front desk or reception area where guests ordinarily check-in or check out.

⁷⁰ Section 20.058(1)(a)-(f), F.S.

⁷¹ Section 20.058(2)-(4), F.S.

⁷² Section 215.981(1), F.S.

⁷³ Section 20.058(5), F.S.

A public lodging establishment must:

- Train certain employees on human trafficking awareness within 6 months after employment, or by January 1, 2020, whichever occurs later. Proof of such employee training must be provided to the Division upon request;
- Implement a procedure for the reporting of suspected human trafficking to the Hotline or to a local law enforcement agency by January 1, 2020; and
- Post a sign with the relevant provisions of the reporting procedure in a conspicuous place in the establishment that is accessible to employees by January 1, 2020.

Such training must include:

- The definition of human trafficking and the differences between sex trafficking and labor trafficking;
- Guidance specific to the public lodging sector on how to identify individuals who may be victims of human trafficking; and
- Guidance on the role of the employees of a public lodging establishment in reporting and responding to suspected human trafficking.

The training must be submitted to and approved by the Division before being provided to employees. The Division may take disciplinary action⁷⁴ against a public lodging establishment that has operated or is operating in violation of the human trafficking training required pursuant to the bill.

The bill does not establish a private cause of action and a public lodging establishment is not liable for any harm resulting from the failure of an employee to prevent, detect, or report suspected human trafficking if the public lodging establishment was in compliance with the training requirements at the time of such harm.

Massage Establishments (Section 2, amending s. 480.043, F.S.)

The bill requires a massage establishment to create and implement human trafficking awareness to massage therapists and employees of the establishment who ordinarily interact with guests.

A massage establishment must:

- Train certain employees on human trafficking awareness within 6 months after employment, or by January 1, 2020, whichever occurs later. Proof of such employee training must be provided to the Board upon request;
- Implement a procedure for the reporting of suspected human trafficking to the Hotline or to a local law enforcement agency by January 1, 2020; and
- Post a sign with the relevant provisions of the reporting procedure in a conspicuous place in the establishment that is accessible to employees by January 1, 2020.

Such training must include:

- The definition of human trafficking and the differences between sex trafficking and labor trafficking;

⁷⁴ Section 509.261, F.S., establishes potential consequences that a public lodging establishment may be subjected to if it is in violation of ch. 509, F.S., or the rules of the Division.

- Guidance specific to the massage establishment sector on how to identify individuals who may be victims of human trafficking; and
- Guidance on the role of the employees of a massage establishment in reporting and responding to suspected human trafficking.

The training must be submitted to and approved by DOH before being provided to employees. The Board may take disciplinary action against a massage establishment that has operated or is operating in violation of the human trafficking training required pursuant to the bill.

The bill does not establish a private cause of action and a massage establishment is not liable for any harm resulting from the failure of an employee to prevent, detect, or report suspected human trafficking if the massage establishment was in compliance with the training requirements at the time of such harm.

Law Enforcement (Section 7, creating s. 943.17297, F.S.)

Section 943.13, F.S., establishes minimum qualifications that must be met for a person to become a certified law enforcement officer. Identifying and investigating human trafficking has been a part of this basic training since 2007.⁷⁵ Additionally, the Criminal Justice Standards and Training Commission⁷⁶ (Commission) offers a 40-hour post-basic course on Advanced Investigative Techniques of Human Trafficking Offenses, which provides a framework for initiating and conducting investigations of human trafficking offenses including the nature and scope of human trafficking and rescue and restoration of the victim.⁷⁷

The bill requires certified law enforcement officers to complete 4 hours of training on identifying and investigating human trafficking as part of basic recruit training required under s. 943.13(9), F.S., or continuing education required under s. 943.135(1), F.S., before July 1, 2022. The training must be developed by the Commission in consultation with the Department of Children and Families (DCF) and the Statewide Council on Human Trafficking⁷⁸ and must be part of the required basic recruit and continuing education training.

The bill provides that an officer who fails to complete the required training will have an inactive certification until the employing agency notifies the Commission that the officer has completed the training.

⁷⁵ Florida Department of Law Enforcement, *2019 Legislative Bill Analysis for SB 540*, (February 4, 2019) (on file with the Senate Criminal Justice Committee).

⁷⁶ The Criminal Justice Standards and Training Commission is within the FDLE and was created pursuant to s. 943.11, F.S. The Commission is tasked with establishing uniform minimum training standards for the training of officers in the various criminal justice disciplines and establishing minimum curricular requirements for criminal justice training schools, among other things. *See generally* s. 943.12, F.S.

⁷⁷ *Supra* n. 62.

⁷⁸ The Statewide Council on Human Trafficking was created in 2014 pursuant to s. 16.617, F.S. The Council was created to support human trafficking victims by enhancing care options available to them. The Attorney General chairs the Council, which is tasked with working with the DCF to create and maintain an inventory of human trafficking programs and services in Florida, developing overall policy recommendations, among other things. Section 16.617(4), F.S., and *supra*. n. 13.

Human Trafficking Victim Expunction (Section 6, amending s. 943.0583, F.S.)

Current law provides that a victim of human trafficking may petition for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed while the person was a victim of human trafficking. However, a victim of human trafficking is not eligible to petition for such an expunction if the record at issue involves a violation of an enumerated offense in s. 775.084(1)(b)1., F.S. Kidnapping is among those listed offenses; however, the bill excludes kidnapping from this list and as a result, a victim of human trafficking would be eligible to petition for the expunction of a violation of kidnapping from his or her criminal history record.

Soliciting for Prostitution Public Database (Section 4, amending s. 796.07, F.S., and Section 5, creating s. 943.0433, F.S.)

The bill creates the Soliciting for Prostitution Public Database (Database) and requires the FDLE to adopt rules to administer the Database. The bill requires the clerk of the court to forward the criminal history record of a person who is convicted or pleads guilty or nolo contendere to soliciting, inducing, enticing, or procuring another to commit prostitution, lewdness, or assignation, pursuant to s. 796.07(2)(f), F.S., regardless of whether adjudication is withheld, to the FDLE for inclusion in the Database.

The FDLE must automatically remove the criminal history record of a person on the Database for a first violation of s. 796.07(2)(f), F.S., if, after 5 years after the person's conviction, such person has not again violated s. 796.07(2)(f), F.S., and has not committed any other offense within that time that would constitute a sexual offense, including, but not limited to, human trafficking or an offense that would require registration as a sexual offender.

The FDLE may not remove a criminal history record from the Database if a person violates s. 796.07(2)(f), F.S., a second or subsequent time.

The Database must include all of the following on each offender:

- His or her full legal name;
- His or her last known address;
- A color photograph of him or her; and
- The offense for which he or she was convicted.

Direct-support organization (Section 1, creating s. 16.618, F.S.)

The bill requires the Department of Legal Affairs (DLA), to establish a DSO to provide assistance, funding, and support to the Statewide Council on Human Trafficking and to assist in the fulfillment of the council's purpose. The DSO must be:

- A Florida corporation, not for profit, incorporated under ch. 617, F.S., and approved by the Secretary of State;
- Organized and operated exclusively to solicit funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer, in its own name, property and funds; and make expenditures in support of the purposes specified in the bill; and

- Certified by the DLA, after review, to be operating in a manner consistent with the purposes of the DSO and in the best interests of the state.

The bill requires the DSO to operate under written contract with the DLA, which must provide for:

- Approval of the DSO's articles of incorporation and bylaws by the DLA;
- Submission of an annual budget for approval by the DLA;
- Annual certification by the DLA that the DSO is complying with the contractual terms and operating in a manner consistent with the DSO's purposes and in the best interests of the state;
- Reversion to the Florida Council Against Sexual Violence⁷⁹ of moneys and property held in trust by the DSO if the DSO is no longer approved to operate or ceases to exist;
- Disclosure of the material provisions of the contract and the distinction between the board of directors and the DSO to donors of gifts, contributions, or bequests, which disclosures must be included in all promotional and fundraising publications;
- An annual financial audit in accordance with s. 215.981, F.S.;
- Establishment of the fiscal year of the DSO as beginning on July 1 of each year and ending on June 30 of the following year;
- Appointment of the board of directors, as specified below; and
- Authority of the DSO's board of directors to hire an executive director.

The bill requires the DSO's board of directors to consist of 7 members, each being appointed to a four-year term. However, for the purpose of providing staggered terms, the bill provides that the Speaker of the House of Representatives and the President of the Senate must each initially appoint one member and the Attorney General must initially appoint two members. These four initial appointments are for two-year terms and all subsequent appointments are for four-year terms.

The board of directors is appointed as follows:

- Four members appointed by the Attorney General, one of which must be a survivor of human trafficking and one of which must be a mental health expert;
- One member appointed by the Governor;
- One member appointed by the Speaker of the House of Representatives; and
- One member appointed by the President of the Senate.

Any vacancy that occurs must be filled in the same manner as the original appointment for the unexpired term of that seat.

In conjunction with the Statewide Council on Human Trafficking, and funded exclusively by the DSO, the DSO shall form strategic partnerships to foster the development of community and private sector resources to advance the goals of the council.

The DSO must consider the participation of counties and municipalities in this state which

⁷⁹ The Florida Council Against Sexual Violence (FCASV) is a statewide nonprofit organization committed to victims and survivors of sexual violence and the sexual assault crisis programs that serve them. See FCASV, *About FCASV*, available at <https://www.fcasv.org/about-fcasv> (last visited February 13, 2019).

demonstrate a willingness to participate and an ability to be successful in any programs funded by the DSO.

The DLA may authorize the appropriate use without charge, of the DLA's property, facilities, and personnel by the DSO. The use must be for the approved purposes of the DSO and may not be made at times or places that would unreasonably interfere with opportunities for the general public to use departmental facilities.

The DLA shall prescribe by agreement conditions with which the DSO must comply in order to use DLA property, facilities, or personnel. Such conditions must provide for budget and audit review and oversight by the DLA.

The DLA may not authorize the use of property, facilities, or personnel of the council, department, or designated program by the DSO which does not provide equal employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.

The DSO may conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and make expenditures to or for the direct or indirect benefit of the council or designated program.

Notwithstanding s. 287.025(1)(e), F.S.,⁸⁰ the DSO may enter into contracts to insure the property of the council or designated programs and may insure objects or collections on loan from other entities in satisfying security terms of the lender.

A DLA employee, a DSO or council employee, a volunteer, or a director or a designated program may not:

- Receive a commission, fee, or financial benefit in connection with serving on the council; or
- Be a business associate of any individual, firm, or organization involved in the sale or the exchange of real or personal property to the DSO, the council, or a designated program.

All moneys received by the DSO shall be deposited into an account of the DSO and shall be used in a manner consistent with the goals of the council or designated program.

The DLA may terminate its agreement with the DSO at any time if the DLA determines that the DSO does not meet the objectives of this section.

The bill provides that the DSO is repealed October 1, 2024, unless reviewed and saved from repeal by the Legislature.

The bill is effective July 1, 2019.

⁸⁰ Section 287.025(1)(e), F.S., prohibits certain insurance coverage on specified state property or insurable subjects.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FDLE and public lodging and massage establishments are expected to incur costs associated with the training required by the bill. The FDLE anticipates such fiscal impact to be approximately \$19,910, due to the Commission being able to revise current law enforcement training to comply with the bill.⁸¹

The fiscal impact for the bill is indeterminate in regards to the administration of the Database. The FDLE would need further clarifying information relating to the logistics of the Database in order to assess the fiscal impact required for its maintenance.⁸²

VI. Technical Deficiencies:

None.

⁸¹ *Supra* n. 62.

⁸² *Id.*

VII. Related Issues:

Language in the whereas clauses contained in CS/CS/SB 540 describes the purpose for establishing the Database as creating a deterrent for the commission of human trafficking. However, the Database in operation will collect and centralize information relating to those convicted of *soliciting prostitution*, regardless of whether the person subject to the solicitation is a victim of human trafficking or not. Therefore, the Database may not be narrowly tailored in its execution to carry out the intent for its creation.

Furthermore, the Database operates very similarly to a registry and therefore, may be regarded as such by the courts. If the courts determine that the purpose of the Database is to establish a civil regulatory scheme, then an inquiry will be made into whether the statute creating the Database is primarily punitive in nature. If it is determined that the statutory scheme is so punitive either in purpose or effect as to negate the intention to deem it civil, then it could be held unconstitutional.⁸³

Additionally, in contrast to other registry statutes, the Database is devoid of explicit language to indicate it will operate prospectively. For example, s. 775.21, F.S., creates the sex offender registry and provides in part that a person will be designated as a sexual predator following the commission of certain acts *on or after* October 1, 1993.⁸⁴ If the Database operates retroactively, the court may find that it is unconstitutional in violation of the *Ex Post Facto* Clause, which prohibits states from enacting laws that change the punishment, and inflict a greater punishment, than the law in place when committed.⁸⁵

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 480.043, 796.07 and 954.0583.

This bill creates the following sections of the Florida Statutes: 16.618, 509.096, 943.0433, and 943.17297.

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 Community Affairs on March 12, 2019:

The Committee Substitute:

- Moves the statutory authority for the human trafficking DSO from DCF to the DLA and requires the DSO to provide assistance and support to the Statewide Council on Human Trafficking;

⁸³ *Smith v. Doe*, 538 U.S. 84 at 85 (2003).

⁸⁴ Section 775.21(5), F.S.

⁸⁵ *Calder v. Bull*, 3 U.S. 386, 390 (1798).

- Reduces the membership of the DSO board of directors from 13 members to 7 and requires a survivor of human trafficking and a mental health expert be appointed to the board;
- Requires certain employees of a massage establishment to complete human trafficking training within 6 months of being hired or by January 1, 2020, whichever occurs later;
- Requires the human trafficking training for massage establishment employees be submitted to DOH for approval before being given to employees;
- Requires the training to educate employees on what human trafficking is, in addition to how to identify individuals who may be victims;
- Permits the Board of Massage Therapy to take disciplinary action against a massage establishment that doesn't meet the training requirements established;
- Changes the due date to January 1, 2020, for human trafficking awareness training to specified employees of public lodging establishments, implementation of procedures for reporting suspected human trafficking to the Hotline or local law enforcement, and posting of sign with reporting procedures;
- Creates the Soliciting for Prostitution Public Database, in place of the Soliciting for Prostitution Registry; and
- Requires FDLE to remove and maintain certain criminal history records on the Database under specified circumstances.

CS by Criminal Justice on February 19, 2019:

The Committee Substitute:

- Requires certain employees of a public lodging establishment to complete human trafficking training within 6 months of being hired or by January 1, 2021, whichever occurs later;
- Requires the human trafficking training be submitted to the Division for approval before being given to employees;
- Requires the training to educate employees on what human trafficking is, in addition to how to identify individuals who may be victims;
- Permits the Division to take disciplinary action against a public lodging establishment that doesn't meet the training requirements established;
- Clarifies the purposes for the direct-support organization created; and
- Requires the Commission and others to develop a 4-hour training for law enforcement officers to complete either as part of basic recruit training or continuing education.

B. Amendments:

None.