

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 376

SPONSOR: Criminal Justice Committee and Senator Smith

SUBJECT: Prostitution

DATE: February 26, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable/CS
2.	_____	_____	APJ	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 376 would enhance the penalty for a third or subsequent violation of the prostitution activities prohibited under s. 976.07(2), F.S., including in part, committing prostitution, procuring another to commit prostitution, or purchasing the services from a prostitute, from a first degree misdemeanor to a third degree felony. However, persons charged with a third or subsequent prostitution offense could also be offered admission into a pretrial intervention program or a substance-abuse treatment program under s. 948.08, F.S. The CS would also subject the motor vehicle of a person convicted of a violation of the prostitution statute to forfeiture as provided under the Contraband Forfeiture Act.

This CS would substantially amend sections 796.07 and 948.08 of the Florida Statutes.

II. Present Situation:

Prostitution

Section 796.07, F.S., proscribes numerous activities involving prostitution, lewdness, or assignation as defined under the statute. The following activities are punishable as second degree misdemeanors (potential fine not exceeding \$500 and/or potential incarceration not exceeding 60 days) for the first violation under this section:

- keeping or operating any place for the purpose of lewdness, assignation, or prostitution;
- offering or agreeing to secure another for the purpose of prostitution or other lewd acts;
- receiving or offering to receive any person into any place or conveyance for the purpose of prostitution, lewdness, or assignation;
- transporting or offering to transport any person to any place or to any other person knowing that the purpose is for prostitution, lewdness, or assignation;

- offering or engaging in prostitution, lewdness, or assignation;
- soliciting or procuring another to commit prostitution, lewdness, or assignation with himself or herself;
- residing in, entering, or remaining in any place or conveyance for the purpose of prostitution, lewdness, or assignation; or
- purchasing the services of any person engaged in prostitution.

A second or subsequent violation is punishable as a first degree misdemeanor (potential fine not exceeding \$1,000 and/or potential incarceration not exceeding one year).

Section 796.08, F.S., makes it a third degree felony to criminally transmit HIV to another person. This crime occurs when a person commits or offers to commit prostitution, or procures another for prostitution by engaging in sexual activity likely to transmit HIV and such person, prior to committing the crime, tests positive for HIV and knows that he or she tested positive and can possibly communicate the virus to another person through sexual activity. A person can be convicted and sentenced separately for criminal transmission of HIV and the underlying offense of prostitution or procurement of prostitution under this section.

Pretrial Intervention Programs

Section 948.08, F.S., provides for pretrial intervention programs, including the substance abuse education and treatment intervention program (drug court). The statute enumerates which crimes a person can be charged with to be eligible for admission into drug court (primarily second or third-degree felony drug purchase or possession offenses). In addition, a person cannot have a prior felony conviction nor have been admitted into a previous felony pretrial program to be eligible. Currently, prostitution offenses are not included in the list of eligible offenses.

Contraband Forfeiture

Currently, any vehicle involved in a felony offense is forfeitable under the Contraband Forfeiture Act as a “contraband article,” defined as “personal property . . . employed as an instrumentality in the commission of or in aiding or abetting in the commission of any felony, whether or not comprising an element of the felony . . .” s. 932.701(2)(a)5., F.S.

The Contraband Forfeiture Act, ss. 932.701-932.707, F.S., prescribes procedures for law enforcement to implement when seizing, forfeiting, and disposing of property. For instance, property may not be forfeited under this Act unless the seizing agency can establish by a preponderance of the evidence that the owner, co-owner, or lienholder knew, or should have known, that the property would be used in criminal activity. s. 932.703(6)(a), F.S.

The constitutionality of the Act has been upheld by the Florida Supreme Court in *Department of Law Enforcement v. Real Property*, 588 So.2d 957 (Fla. 1991). Under the Act, the seizing agency is required to have probable cause to believe that the property sought to be seized “was used, is being used, was attempted to be used, or was intended to be used” in violation of the Act. *White v. State*, 680 So.2d 550, 554 (Fla.App. 1 Dist. 1996).

Personal property may be seized at the time of the violation, or subsequent to the violation, provided that the person entitled to notice is notified at the time of seizure or by certified mail, return receipt requested (notice must be mailed within five working days after the seizure). The

person must also be told in the notice that there is a right to an adversarial preliminary hearing after the seizure (within 15 days) to determine whether probable cause exists to believe that such property has been, or is being used in violation of the Act.

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 376 would enhance the penalty for a third or subsequent violation of the prostitution activities prohibited under s. 976.07(2), F.S., including in part, committing prostitution, procuring another to commit prostitution, or purchasing the services from a prostitute, from a first degree misdemeanor to a third degree felony (potential fine not exceeding \$5,000 and/or imprisonment not exceeding 5 years). However, persons charged with a third or subsequent prostitution offense could also be offered admission to a pretrial intervention program or a substance-abuse treatment program (drug court) under s. 948.08, F.S.

Accordingly, the penalty for committing a third or subsequent offense of prostitution, procuring another to commit prostitution, or purchasing the services from a prostitute would be comparable to the current penalty for criminal transmission of HIV when committing prostitution or procuring another to commit prostitution.

The CS would also subject the motor vehicle of a person convicted of a violation of the prostitution statute to forfeiture as provided under the Contraband Forfeiture Act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons convicted of a third or subsequent violation of prostitution under the CS would be subjected to a potential fine not exceeding \$5,000, rather than \$1,000.

C. Government Sector Impact:

The Criminal Justice Estimating Conference (CJEC) estimated the prison bed impact as a result of the original bill as follows:

Fiscal Year	Projected Additional Prison Beds Required Under SB 376	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2002-2003	16	16	\$150,304	\$784,980	\$935,284	\$935,284
2003-2004	30	14	\$439,576	\$479,106	\$918,682	\$1,853,966
2004-2005	48	18	\$759,720	\$569,730	\$1,329,450	\$3,183,416
2005-2006	69	21	\$1,165,437	\$527,174	\$1,692,611	\$4,876,027
2006-2007	88	19	\$1,604,069	\$597,639	\$2,201,708	\$7,077,735
Total	88	88	\$4,119,106	\$2,958,629	\$7,077,735	\$7,077,735

The CJEC also estimated an impact on community supervision as a result of the bill.

However, the CS allows for a pretrial diversion program for a third-time prostitution conviction, which could lessen the number of persons going to prison under the CS. Thus, the CJEC has been requested to review the CS in light of this change.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In its 2001 report, the Task Force on Self-Inflicted Crimes recommended that the penalty for prostitution be enhanced as has been done in this CS as a way to “break the cycle” of prostitution by working with habitual prostitutes in a secure setting offering treatment. Testimony indicated that the habitual prostitute would have less opportunity while incarcerated to be exposed to drugs, dangerous sexual behavior, and criminal violence.

The Legislative Committee on Intergovernmental Relations (LCIR) was directed by the Legislature to study certain issues related to prostitution, including penalty enhancement. The LCIR recently released its prostitution report. According to the report, all 40 of the state attorneys and public defenders were surveyed on the question of enhancing the penalty. Out of

the 25 who responded, two supported the proposal and one stated it would result in longer supervised probationary periods. Seventeen respondents opposed the penalty enhancement (9 were public defenders and 8 were state attorneys). Five respondents did not take a position supporting or opposing the idea.

However, the CS would also allow a person convicted of a third or subsequent prostitution offense the opportunity to be eligible for a pretrial intervention program, including drug court, which was suggested in the prostitution report.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
