

**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 Criminal and Civil Justice Appropriations Committee

BILL: CS/SB 624

INTRODUCER: Criminal and Civil Justice Appropriations Committee; Senators Dockery and Gaetz

SUBJECT: Human Smuggling

DATE: April 15, 2008                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Pardue</u>	<u>McElroy</u>	<u>MS</u>	<b>Favorable</b>
3.	<u>Cary</u>	<u>Maclure</u>	<u>JU</u>	<b>Favorable</b>
4.	<u>Butler</u>	<u>Sadberry</u>	<u>JA</u>	<b>Fav/CS</b>
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill punishes human smuggling. The bill makes it unlawful for a person to transport into this state an individual whom the person knows, or should know, is illegally entering the United States or has illegally remained in the United States. If the individual transported is 18 years of age or older, the offense is a third-degree felony; if the individual transported is a minor, the offense is a second-degree felony. If, during the course of this violation, the individual being transported suffers great bodily harm or death, the offense is a second-degree felony, unless the individual is a minor, in which case the offense is a first-degree felony. A person commits a separate offense for each individual or minor he or she transports into this state in violation of this section.

The Criminal Justice Impact Conference, which provides the official estimate of the prison bed impact of legislation, estimated that this bill will have an insignificant impact on prison beds.

This bill creates section 787.07, Florida Statutes.

**II. Present Situation:**

Human smuggling is not presently punished under Florida law, though human trafficking and sex trafficking are punished.<sup>1</sup>

<sup>1</sup> Sections 787.06 and 796.045, F.S.

## **Distinguishing Human Smuggling and Trafficking**

Human and sex trafficking can be generally distinguished from human smuggling by the actions and the intent of the participants and by their final circumstances.

The National Center for State Courts and the Human Smuggling and Trafficking Center have explained what human smuggling and human trafficking are and how they differ. The National Center for State Courts states:

Thousands of people are smuggled or trafficked into the United States annually. Smuggling is defined as a consensual transaction where the transporter and transportee agree to circumvent immigration control for supposed mutually advantageous reasons. Men are mostly smuggled into the United States from the southern border. However, at any time, a smuggled person can become a trafficked victim. Several examples of criminal organizations that run smuggling operations show that transporters fool transportees into thinking they will be simply transported across the border for a fee, but wind up having documents confiscated and sold into trafficking rings. Human trafficking is the recruitment, transportation, or receipt of persons by some form of coercion, fraud, or other abuse of power for the purpose of exploitation. Most trafficking victims are women and children.<sup>2</sup>

The Human Smuggling and Trafficking Center states:

Unlike smuggling, which is often a criminal commercial transaction between two willing parties who go their separate ways once their business is complete, trafficking specifically targets the trafficked person as an object of criminal exploitation. The purpose from the beginning of the trafficking enterprise is to profit from the exploitation of the victim. It follows that fraud, force or coercion all plays [sic] a major role in trafficking.

It may be difficult to make a determination between smuggling and trafficking in the initial phase. Trafficking often includes an element of smuggling, specifically, the illegal crossing of a border. In some cases the victim may believe they are being smuggled, but are really being trafficked, as they are unaware of their fate. For example, there have been cases where women trafficked for sexual exploitation may have knowingly agreed to work in the sex industry and believed that they would have decent conditions and be paid a decent wage. What they did not realize is that the traffickers would take most or all of their income[,] keep them in bondage and subject them to physical force or sexual violence. Or, the victims may have believed they were being smuggled into the United States where they would be given a job as a nanny or model, later realizing that the so-called smugglers deceived them and that they would be forced to work in the sex industry.

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<sup>2</sup> See National Center for State Courts, <http://www.ncsconline.org/wc/CourTopics/FAQs.asp?topic=ImmLaw>.

Conversely, persons being smuggled may sometimes willingly enter into “contracts” with the smugglers to work off a smuggling debt. Unless the aliens’ labor or services are enforced through the forms of coercion set forth in the trafficking statutes, such deferred repayment does not make these people trafficking victims. However, a work-based debt can be an “indicator” of trafficking, and such a situation could trigger further examination to determine whether the aliens are victims of trafficking or extortion.<sup>3</sup>

### **Federal Human Smuggling Law**

Federal law punishes human smuggling.<sup>4</sup> According to the federal Human Smuggling and Trafficking Center, “[t]he Immigration and Naturalization Act, Section 274(a)(1), (2), provides for criminal penalties under Title 8, United States Code, Section 1324, for acts or attempts to bring unauthorized aliens to or into the United States, transport them within the U.S., harbor unlawful aliens, encourage entry of illegal aliens, or conspire to commit these violations, knowingly or in reckless disregard of illegal status.”<sup>5</sup> The federal “Failure to Heave to” law provides an additional tool to combat human smuggling by providing criminal sanctions for failure to obey an order by federal officials to stop a vessel.<sup>6</sup>

### **Federal Human Trafficking Law**

Federal law also punishes human trafficking.

The Victims of Trafficking and Violence Protection Act of 2000, Pub L. No. 106-386 (effective October 28, 2000), supplemented existing federal laws applicable to human trafficking, including those passed to enforce the Thirteenth Amendment (proscribing slavery and involuntary servitude). The Act is the result of coordinated efforts between the FBI, INS, Department of Labor, and other agencies to address domestic and global trafficking of persons, primarily women and children.

The Act:

- Creates new laws that criminalize trafficking with respect to slavery, involuntary servitude, peonage, or forced labor;<sup>7</sup>
- Permits prosecution where nonviolent coercion is used to force victims to work in the belief they would be subject to serious harm;<sup>8</sup>

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<sup>3</sup> *Fact Sheet: Distinctions Between Human Smuggling and Human Trafficking*, April 2006, Human Smuggling and Trafficking Center, at 2-3. (<http://www.state.gov/g/tip/rls/fs/2006/69386.htm> then click on “PDF Version”).

<sup>4</sup> 8 U.S.C. s. 1324. Additionally, several states also punish human smuggling. *See* laws of Arizona (Ariz.Rev.Stat. Ann. s. 13-2319), Colorado (Col.Rev.Stat. s. 18-13-128), Oklahoma (21 Okla.Stat. s. 446), and Tennessee (Tenn.Code Ann. s. 39-17-114).

<sup>5</sup> *Fact Sheet: Distinctions Between Human Smuggling and Human Trafficking*, April 2006, Human Smuggling and Trafficking Center, at 2. (<http://www.state.gov/g/tip/rls/fs/2006/69386.htm> then click on “PDF Version”).

<sup>6</sup> *See* USA Patriot Improvement and Reauthorization Act of 2005, PL 109-177, section 303(a)(1), March 9, 2006, which states: “It shall be unlawful...to knowingly fail to obey an order by an authorized Federal law enforcement officer to heave to that vessel.”

<sup>7</sup> 18 U.S.C. s. 1592.

- Permits prosecution where the victim's service was compelled by confiscation of documents such as passports or birth certificates;<sup>9</sup>
- Increases prison terms for all slavery violations from 10 years to 20 years and adds life imprisonment where the violation involves the death, kidnapping, or sexual abuse of the victim;<sup>10</sup>
- Requires courts to order restitution and forfeiture of assets upon conviction;<sup>11</sup>
- Enables victims to seek witness protection and other types of assistance;<sup>12</sup> and
- Gives prosecutors and agents new tools to get legal immigration status for victims of trafficking during investigation and prosecution.<sup>13</sup>

### **Florida Human and Sex Trafficking Laws**

Section 787.06, F.S., provides that it is a second-degree felony for any person to knowingly:

- Engage, or attempt to engage, in human trafficking with the intent or knowledge that the trafficked person will be subjected to forced labor or services; or
- Benefit financially by receiving anything of value from participation in a venture that has subjected a person to forced labor or services.

“Human trafficking” is defined in that section as “transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport.”

Section 796.045, F.S., provides that any person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution, commits the offense of sex trafficking, a second-degree felony. However, a person commits a first-degree felony if the offense of sex trafficking is committed against a person who is under the age of 14 or if such offense results in death.

Beyond human smuggling for unauthorized immigration purposes, Congress found that terrorists also use evasive, but detectable, methods to travel, including human smuggling networks.<sup>14</sup> Such smuggling could pose a potential threat to the security of the United States.

Florida does not have a statute that penalizes human smuggling.

### **III. Effect of Proposed Changes:**

The bill creates s. 787.07, F.S., which punishes human smuggling. The bill makes it unlawful for a person to transport into this state an individual whom the person knows, or should know, is illegally entering the United States or has illegally remained in the United States. If the

<sup>8</sup> 18 U.S.C. s. 1591.

<sup>9</sup> 18 U.S.C. s. 1592.

<sup>10</sup> 18 U.S.C. ss. 1581, 1583, and 1584.

<sup>11</sup> 18 U.S.C. s. 1593.

<sup>12</sup> 22 U.S.C. s. 7105.

<sup>13</sup> *Id.*

<sup>14</sup> 8 U.S.C. s. 1776.

individual transported is 18 years of age or older, the offense is a third-degree felony; if the individual transported is a minor, the offense is a second-degree felony. If, during the course of this violation, the individual being transported suffers great bodily harm or death, the offense is a second-degree felony, unless the individual is a minor, in which case the offense is a first degree felony. A person commits a separate offense for each individual or minor he or she transports into this state in violation of this section.

The bill provides an effective date of October 1, 2008.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

This bill may require counties and municipalities to spend funds because it creates criminal penalties for human smuggling; therefore, offenders may be arrested and housed in jails while awaiting trial.

Section 18(a), Art. VII of the State Constitution provides that a city or county is not bound by any general law requiring the city or county to spend funds or to take an action to expend funds unless the Legislature has determined that the law fulfills an important state interest and unless funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure.

However, Section 18(d), Art. VII of the Florida Constitution provides that criminal laws are exempt from the requirements of this section. Thus, it appears this bill is exempt from the requirements of Section 18(a), Art. VII of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

The Constitution grants Congress the power to “establish a uniform Rule of Naturalization.”<sup>15</sup> However, the Constitution does not automatically preempt state action relating to immigration. The Supreme Court has held that “the States do have some authority to act with respect to illegal aliens, at least where such action mirrors federal objectives and furthers a legitimate state goal.”<sup>16</sup>

In 2006, a judge in Maricopa County, Arizona, rejected an argument that Arizona’s human smuggling law violated the Supremacy Clause of the U.S. Constitution and was

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<sup>15</sup> U.S. Const. art. I, s. 8, cl. 4.

<sup>16</sup> *Plyer v. Doe*, 457 U.S. 202, 225 (1982).

preempted by federal law. The court stated that “concurrent state and federal enforcement of illegal alien smuggling and conspiracy to smuggle illegal alien laws serves both federal and state law enforcement purposes and is highly compatible. In fact, concurrent enforcement enhances rather than impairs federal enforcement objectives. Thus, because federal and State enforcement have compatible purposes, and Congress has not expressly preempted state prosecution of such conduct, preemption does not exist.”<sup>17</sup>

In a case that dealt with both preemption and the judicially created constitutional “right to travel” doctrine, a federal judge upheld a Tennessee law that restricted the issuance of drivers’ licenses to citizens or lawful permanent residents. The judge, interpreting the federal Constitution, determined that illegal aliens are not a “suspect class” under the Constitution and that illegal aliens do not have a constitutional right to move freely about the country or the state.<sup>18</sup>

In contrast, a Louisiana appellate court determined that a state law making the operation of a motor vehicle while illegally present in the United States a crime was preempted by the Federal REAL ID Act because the act implicitly recognized that states can legally issue driver’s licenses without a person being in a position to establish his legal presence in the United States.<sup>19</sup>

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

None.

### C. Government Sector Impact:

The Department of Corrections (DOC) states: “As the bill creates new felonies, the Department of Corrections is unable to provide data from its current offender population to assist in gauging the impact this bill will have on the prison and probation population.” The DOC notes that since the bill does not rank the human smuggling offenses, the offenses automatically default to the following levels: a felony of the third degree within offense level 1; a felony of the second degree within offense level 4; and a felony of the first degree within offense level 7.<sup>20</sup>

A first-time offender with only a level 1 or level 4 offense would not score a lowest permissible sentence of imprisonment, though the court may sentence an offender to a

<sup>17</sup> *State of Arizona v. Cupertino Salazar*, CR2006-005932-003 DT (order by the Honorable Thomas W. O’Toole filed on June 9, 2006), Superior Court of Arizona, Maricopa County.

([http://www.maricopacountyattorney.org/Press/PDF/CR\\_eng\\_20060612.pdf](http://www.maricopacountyattorney.org/Press/PDF/CR_eng_20060612.pdf)).

<sup>18</sup> *League of United Latin Am. Citizens (LULAC) v. Bredesen*, 2004 WL 3048724 (M.D. Tenn., 2004).

<sup>19</sup> *State v. Lopez*, 2005-KA-0685 (La. App. 4 Cir. 12/20/06); 948 So. 2d 1121.

<sup>20</sup> Department of Corrections, Senate Bill 624 Analysis, Dec. 11, 2007.

term of imprisonment up to the maximum penalty for the felony degree of the offense, even if the scored lowest permissible sentence is not prison. A first time offender with only a level 7 offense would score a lowest permissible sentence of imprisonment.

The Criminal Justice Impact Conference, which provides the official estimate of the prison bed impact of legislation, estimated that this bill will have an insignificant impact on prison beds.<sup>21</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal and Civil Justice Appropriations on April 15, 2008:**

The bill defines the term “illegal alien” to mean an individual who is not authorized to enter the United States at the time of entry and who is not granted official authorization to remain in the United States by the United States Government before being deported or removed.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>21</sup> The Criminal Justice Impact Conference spreadsheet may be viewed by clicking on “2008 Conference Results” at the following URL: <http://edr.state.fl.us/conferences/criminaljustice/Impact/cjimpact.htm>.