

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 Military Affairs and Domestic Security Committee

BILL: SB 624

INTRODUCER: Senators Dockery and Gaetz

SUBJECT: Human Smuggling

DATE: January 29, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Pardue</u>	<u>McElroy</u>	<u>MS</u>	Favorable
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>JA</u>	_____
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 fiscal impact will likely be very small due to an anticipated low volume of offenders impacting the need for additional prison beds.

This bill creates section 787.07, F.S.

II. Present Situation:

Human smuggling is not presently punished under Florida law, though human trafficking and sex trafficking are punished. Federal law punishes human smuggling.¹ 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

¹ Several states also punish human smuggling. See laws of Arizona (A.R.S. s. 13-2319), Colorado (C.R.S.A. s. 18-13-128), Oklahoma (21 Okl.St. Ann. s. 446), and Tennessee (T.C.A. s. 39-17-114).

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.”² The federal “Failure to Heave to” law³ 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.

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.⁴

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 play a major role in trafficking. It may be difficult to make a determination between smuggling and trafficking case 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.

² *Fact Sheet: Distinctions Between Human Smuggling and Human Trafficking*, January 2005, Human Smuggling and Trafficking Center. (http://www.usdoj.gov/crt/crim/smuggling_trafficking_facts.pdf)

³ See USA Patriot Improvement and Reauthorization Act of 2005, PL 109–177, section 303, March 9, 2006.

⁴ See National Center for State Courts website at: <http://www.ncsconline.org/wc/CourTopics/FAQs.asp?topic=ImmLaw>

Conversely, persons being smuggled willingly enter into “contracts” with the smugglers to work off a smuggling debt. They may live in squalid conditions, but when the debt is paid, they are free to leave. Thus, it is often necessary to look at a person’s final circumstances to determine if the person is willingly complicit in a smuggling endeavor, or the victim of traffickers.⁵

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

- Engage, or attempts 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.⁶ Such smuggling could pose a potential threat to the security of the United States.

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 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 for an effective date of October 1, 2008.

⁵ See footnote 2.

⁶ 8 USC 1776.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

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 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 state and federal 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."⁷

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.

⁷ *State of Arizona v. Cupertino Salazar*, CR2006-005932-003 DT (order by the Honorable Judge 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)

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 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 met on January 17, 2008 and considered comparable bills relating to human smuggling. The Conference found that passage of the bill would likely have very small additional prison bed impact.

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.)

None.

B. Amendments:

None.