

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 535 Sexual Exploitation

**SPONSOR(S):** Fresen and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1700

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Services Policy Committee		Schoonover	Schoolfield
2)	Public Safety & Domestic Security Policy Committee			
3)	Full Appropriations Council on Education & Economic Development			
4)	Health & Family Services Policy Council			
5)				

### SUMMARY ANALYSIS

HB 535 creates the Florida Safe Harbor Act and makes several amendments to protect and provide shelter for sexually exploited children. Specifically, the bill makes the following changes:

- Makes several amendments to definitions relating to sexual exploitation.
- Requires delivery of children alleged to be dependent and sexually exploited to short-term safe houses;
- Provides rebuttable presumptions of law that placement in safe houses is necessary for sexually exploited children;
- Provides requirement that implementation of safe houses is contingent on funding;
- Requires the operation of short-term safe houses and 1 statewide long term safe house
- Revises prostitution laws so that certain acts related to prostitution are unlawful only if committed by any person 16 years of age or older.
- Prohibits juvenile probation officers and the state attorney from filing a petition for delinquency for an act related to prostitution unless the child has been previously adjudicated delinquent.

While implementation is contingent upon available funding, an estimate of \$350 per bed per day could be expected for the safe homes that would be established, both short-term and long term.

The bill has effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### *Sexual Exploitation*

Current law references sexual exploitation in the definition of "sexual abuse of a child."<sup>1</sup> Sexual exploitation of a child includes allowing, encouraging, or forcing a child to either solicit for or engage in prostitution; or engage in a sexual performance, as defined by ch. 827, F.S.<sup>2</sup>

Prostitution is the giving or receiving of the body for sexual activity for hire, excluding sexual activity between spouses.<sup>3</sup> It is unlawful to offer to commit, to commit, or to engage in prostitution, lewdness, or assignation.<sup>4</sup> The prohibition against these acts exists without respect to the age of the person offering, committing, or engaging in prostitution.

A first offense for prostitution is a 2nd degree misdemeanor, a second offense is a 1st degree misdemeanor, and a third or subsequent offense is a third degree felony.<sup>5</sup> In addition to the criminal penalties, a civil penalty of \$500 can be assessed against individuals that solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

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<sup>1</sup> s. 39.01(67), F.S.

<sup>2</sup> s. 39.01(67)(g), F.S.

<sup>3</sup> s. 796.07(1)(a), F.S.

<sup>4</sup> s. 796.07(e), F.S.,

<sup>5</sup> s. 796.07(4), F.S.,

<sup>6</sup> s. 769.07(6), F.S.

<sup>7</sup> s. 796.045, F.S.

<sup>8</sup> *Id.*

## *Sex-Trafficking and Prostitution of Children*

It is estimated that about 293,000 American youth are currently at risk of becoming victims of commercial sexual exploitation. The majority of American victims of commercial sexual exploitation tend to be runaway youth living on the streets who are highly susceptible to become victims of prostitution. These children generally come from homes where they have been abused, or from families that have abandoned them, and often become involved in prostitution as a way to support themselves financially or to get the things they want or need.<sup>9</sup> Other young people are recruited into prostitution through forced abduction, pressure from adults, or through deceptive agreements between parents and traffickers.<sup>10</sup> In a study conducted at the University of New Hampshire in 2009, researchers found that among a sampling of law enforcement agencies for information concerning youth involved in prostitution, of the estimated 1,450 arrests /detentions for crimes related to juvenile prostitution in the U.S. in 2005, 95% involved third party exploiters, 31% were for what they labeled solo types of prostitution cases, and 12% involved sexual exploitation.<sup>11</sup>

Third party or pimp-controlled commercial sexual exploitation of children is linked to escort and massage services, private dancing, drinking and photographic clubs, major sporting and recreational events, major cultural events, conventions, and tourist destinations. About one-fifth of these children become involved in nationally organized crime networks and is trafficked nationally. They are transported around the United States by a variety of means – cars, buses, vans, trucks or planes, and are often provided counterfeit identification to use in the event of arrest.<sup>12</sup> The average age at which girls first become victims of prostitution is 12-14; for boys and transgender youth it is 11-13.<sup>13</sup>

### *Services Currently Available for Shelter*

If a child in the Department of Children and Family Services' (DCF) care is missing, the case worker fills out a Missing Child Report, which details the child's disappearance, including involvement in prostitution.<sup>14</sup> Involvement in prostitution was cited in an estimated 109 cases for children that had runaway while under the care of DCF.<sup>15</sup>

DCF acknowledges that minimal and inappropriate shelters exist for victims of sexual exploitation since victims in runaway shelters or group homes can continue to be psychologically manipulated and return to the control of the trafficker. Foster homes, group homes, and shelters are not ideal for several reasons including the fact that these residences are not equipped to deal with sexual exploitation trauma and also that the trafficker/pimp could easily find the child and threaten to harm the foster family or residents unless contact with the child is permitted.<sup>16</sup>

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<sup>9</sup> Id.; Richard J. Estes and Neil Alan Weiner, *Commercial Sexual Exploitation of Children in the U.S, Canada and Mexico*, University of Pennsylvania (2001), available at [www.sp2.upenn.edu/~restes/CSEC\\_Files/Exec\\_Sum\\_020220.pdf](http://www.sp2.upenn.edu/~restes/CSEC_Files/Exec_Sum_020220.pdf). (last visited 3/17/10)

<sup>10</sup> Staff Analysis, HB 535 (2010); Department of Children and Family Services. (on file with committee staff); Francis T. Miko & Grace Park, *Trafficking in Women and Children: The U.S. and International Response*, p. 7. (Updated July 10, 2003), at <http://www.usembassy.it/pdf/other/RL30545.pdf>. (last visited 2/17/2010).

<sup>11</sup> Staff Analysis, HB 535 (2010); Department of Children and Family Services. (on file with committee staff); Kimberly J. Mitchell, David Finkelhor and Janis Wolak, *Conceptualizing Juvenile Prostitution as Child Maltreatment: Findings from the National Juvenile Prostitution Study*, p.22-26, University of New Hampshire Sage Publications

<sup>12</sup> Analysis, HB 535 (2010); Department of Children and Family Services. (on file with committee staff); Richard J. Estes and Neil Alan Weiner, *Commercial Sexual Exploitation of Children in the U.S, Canada and Mexico*, pp. 7-8. University of Pennsylvania (2001), available at [www.sp2.upenn.edu/~restes/CSEC\\_Files/Exec\\_Sum\\_020220.pdf](http://www.sp2.upenn.edu/~restes/CSEC_Files/Exec_Sum_020220.pdf).

<sup>13</sup> Id.

<sup>14</sup> Staff Analysis, HB 535 (2010); Department of Children and Family Services. (on file with committee staff).

<sup>15</sup> Telephone Conversation with Hans Soder at the Department of Children and Families Services (3/19/2010) – Out of 29,000 kids in DCF care, it is estimated that 110-120 may have had some involvement in prostitution based on box checked on missing person form.

<sup>16</sup> Staff Analysis, HB 535 (2010); Department of Children and Family Services. (on file with committee staff).

DCF may also use the State Inpatient Psychiatric Placement (SIPP), which provides secure housing and services. The program includes lengthy assessment that must be performed prior to placement.<sup>17</sup> Unfortunately, exploited children tend to leave before services and placement is finalized.<sup>18</sup>

Services are available through the Children In Need of Services (CINS) program to provide short-term shelter, counseling, services, and case management in one of the 28 youth shelters statewide that are operated by the Department of Juvenile Justice (DJJ).<sup>19</sup> These shelters are primarily voluntary and a court may order the child to stay in shelter for a period no longer than 120 days.<sup>20</sup> Even under this longer stay option, only 10 are available statewide<sup>21</sup>. But since most sexually exploited children are adjudicated dependent, they would not be eligible for CINS service.<sup>22</sup>

If a judge finds that a child is either in contempt of the court or in need of an extremely safe treatment environment, the judge may place the child in a locked setting for up to 120 days.<sup>23</sup> Reductions in funding have resulted in fewer than 10 children served per year under this type of physically secure placement.<sup>24</sup> There is simply not enough availability to consider this placement as a viable option for exploited children.

### **Effect of Proposed Changes**

The bill creates the Florida Safe Harbor Act in s.39.001(4), F.S., to provide special care and services to all sexually exploited children in the dependency process. One of the policy changes the bill makes is creating a rebuttable presumption that children have been sexually exploited when committing acts such as prostitution. Under this change, if a law enforcement officer encounters a child (under age 18) for an act of prostitution, the officer must presume the child has been sexually exploited and must transfer the child to a short-term safe house. Additionally, the bill also makes a policy change for the crime of prostitution by making certain acts related to prostitution unlawful only if committed by a person 16 years of age or older.

#### *Definitions*

Specifically, the bill amends the following definitions in s. 39.01, F.S.:

- “abuse” is amended so that it includes sexual abuse.
- “child who is found to be dependent” is amended so it includes children that have been sexually exploited and have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care. The effect of this change will place sexually exploited children within dependency actions.
- “sexual abuse of a child” is amended so that sexual exploitation includes the act of a child offering to engage in or engaging in prostitution or sexual acts. The definition is also amended to include participation in sex trafficking as an act of sexual exploitation of a child. The effect of these changes to the definition of “sexual exploitation of a child” will create additional grounds for sexual exploitation so that an individual is also held responsible for the voluntary act of the child offering to engage in or engaging in prostitution.

#### *Transfer to a Short-term Safe House*

The bill amends s. 39.401, F.S., by requiring law enforcement officers to deliver a sexually exploited child to a short-term safe house if one is available. The effect of this change will require a law enforcement officer to deliver a youth who is being sexually exploited to a safe house, regardless of whether the child is a repeat offender or voluntarily engaging in prostitution.

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<sup>17</sup> s. 39.407, F.S.

<sup>18</sup> Staff Analysis, HB 535 (2010); Department of Children and Family Services. (on file with committee staff).

<sup>19</sup> Id.

<sup>20</sup> s. 984.226, F.S.

<sup>21</sup> Staff Analysis, HB 535 (2010); Department of Children and Family Services. (on file with committee staff).

<sup>22</sup> Id.

<sup>23</sup> s. 984.226, F.S.

<sup>24</sup> Staff Analysis, HB 535 (2010); Department of Children and Family Services. (on file with committee staff).

### *Shelter Placement*

The bill amends s. 39.402, F.S., by creating a rebuttable presumption on placement of a sexually exploited child in a short-term safe house. The bill requires DCF, at the hearing to continue shelter care, to establish probable cause that the child has been sexually exploited, and that placement in a short-term safe house is most appropriate. The bill also adds sexual exploitation to the list of conditions which show reasonable effort by DCF to prevent or eliminate the need for removal. The effect of these changes will get a sexually exploited child into shelter and treatment for prostitution rather than processed through the criminal justice system.

### *Disposition Hearings*

The bill also amends s. 39.521, F.S., to add sexual exploitation as one of the reasons a child cannot safely remain at home in findings by the court during a disposition hearing. Additionally, the bill requires the court to commit a victim of sexual exploitation to a safe house when the child has been adjudicated dependent. The effect of these changes will provide cause for the court in a dependency action to remove a child from the home who has been sexually exploited to place the child in a safe house and therefore removal is warranted.

### *Safe-Harbor Placement*

The bill creates s. 39.524, F.S., relating to safe-harbor placement. The section requires any child 6 years of age or older who has been found to be a victim of sexual exploitation to be assessed for placement in a safe house, and if placement is warranted, it shall be granted, if available. It also requires all safe houses that receive children to report to DCF its success in achieving permanency for those children. The section clarifies that safe houses can be used as placement of children who are not sexually exploited if such placement is appropriate. It also requires DCF to report to the Legislature on the placement of children in safe homes during the year and include a detailed account of expenditures incurred.

### *Funding*

Section 39.524, F.S., also makes creation of the safe houses contingent upon available appropriations from the General Appropriations Act. Specifically the bill directs lump sum funding for safe houses and short-term safe houses to a special category designated as "Special Categories: Grants and Aids-Safe Houses." The bill also requires DCF to submit a spending plan that identifies the safe-house capacity shortage throughout the state. The bill permits the use of funds as one-time startup funding costs including, but limited to, fixed capital outlay and renovations.

### *Safe Harbors for Sexually Exploited Children*

The bill also creates s. 409.1678, F.S., relating to safe harbor for children who are victims of sexual exploitation. The section requires DCF to enter into an interagency agreement with the Department of Juvenile Justice to identify agency responsibilities for referrals, placement, service, coordination, terms and conditions, and performance outcomes. It also creates a definition for "child advocate" for sexually exploited children to ensure short-term safe houses are employed by individuals trained to best assist the child. The section also creates definitions for both "safe house" and "short-term safe house." Both facilities would be required to be licensed by DCF as a child-caring agency under s. 409.175, F.S. A "safe house" is different from a "short-term safe house" in that it has gender specific and separate living quarters for sexually exploited children who have been adjudicated dependent or delinquent and need to reside in a secure facility with 24-hour-awake staff. The section also defines "sexually exploited child" to mean a dependent child who has suffered sexual abuse, as defined in 39.01(67)(g).

### *Short-term Safe Houses*

Also in s. 409.1678, F.S., the bill directs each of the 15 DCF child service districts to address the needs of sexually exploited children and to the extent funds are available ensure that preventative services, including a short-term safe house is available to children in the district. The bill directs DCF or a lead agency to contract with an appropriate not-for-profit agency with experience working with sexually exploited children to operate the short-term safe house.

### *Long-term Safe House*

The bill also requires DCF to contract with an appropriate not-for-profit agency to operate at least one statewide long term safe house to provide safe and secure long-term housing and specialized services for sexually exploited children throughout the state. The bill provides DCF with rule-making authority to implement the provisions of 409.1678, F.S.

### *Prohibitions of Prostitution*

The bill amends s. 796.07, F.S., by adding additional prohibitions of prostitution. Specifically, the bill makes it unlawful to use a deadly weapon during the commission of offenses relating to prostitution. The bill also makes certain acts related to prostitution unlawful only if committed by any person 16 years of age or older. The effect of this change could result in individuals under the age of 16 not being held criminally responsible for acts of prostitution that are voluntary.

### *Juvenile Delinquency*

The bills amends s. 985.145, F.S. and s. 985.15, F.S., by prohibiting juvenile probation officers and the state attorney from filing a petition for delinquency for an act related to prostitution unless the child has been previously adjudicated delinquent.

## B. SECTION DIRECTORY:

Section 1. Provides a name for the act.

Section 2. Amends s. 39.001, F.S., relating to purposes and intent; personnel standards and screening.

Section 3. Amends s. 39.01, F.S., relating to definitions.

Section 4. Amends s. 39.401, F.S., relating to taking a child alleged to be dependent into custody; law enforcement officers and authorized agents of the department.

Section 5. Amends s. 39.402, F.S., relating to placement in a shelter.

Section 6. Amends s. 39.521, F.S., relating to disposition hearings; powers of disposition.

Section 7. Creates s. 39.524, F.S., relating to safe-harbor placement.

Section 8. Amends s. 322.28, F.S., relating to period of suspension or revocation.

Section 9. Creates s. 409.1678, F.S., relating to safe harbor for children who are victims of sexual exploitation.

Section 10. Amends s. 796.07, F.S., relating to prohibiting prostitution, etc.; evidence; penalties; definitions.

Section 11. Amends s. 985.145, F.S., relating to responsibilities of juvenile probation officer during intake; screenings and assessments.

Section 12. Amends s. 985.15, F.S., relating to filing decisions.

Section 13. Provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

2. Expenditures:

An indeterminate cost will impact state government. While implementation is contingent upon available funding, an estimate of \$350 per bed per day could be expected for the safe homes that would be established.<sup>25</sup>

The following two examples can be used to predict the cost of the short-term safe homes and the statewide safe home.

Short Term Safe-Homes

A) 15 short-term safe homes (one in each DCF circuit), which has 3 beds. At \$350 per day per bed, under this scenario, an expected estimated cost would be approximately **\$5.8 million**.

B) 7 short-term safe homes (2 circuits share one), which has 3 beds. At \$350 per bed per day, under this scenario, an expected cost would be approximately **\$2.7 million**.

Statewide Long Term Safe-Home

A) Assuming 24 beds at \$350 per bed per day, an expected cost would be approximately **\$3.0 million**

B) Assuming 15 beds at \$350 per bed per day, an expected cost would be approximately **\$1.9 million**

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

While implementation is contingent upon available funding, an estimate of \$350 per bed per day could be expected for the safe homes that would be established.<sup>26</sup>

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

<sup>25</sup> Staff Analysis, HB 535 (2010); Department of Children and Family Services. (on file with committee staff).

<sup>26</sup> Staff Analysis, HB 535 (2010); Department of Children and Family Services. (on file with committee staff).

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill creates rule-making authority for DCF relating to the safe harbor of sexually exploited children.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**