

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 Justice Committee

BILL: SB 1816

INTRODUCER: Senator Benacquisto

SUBJECT: Protection of Vulnerable Persons

DATE: January 24, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The major features of the bill are described as follows:

- Requires reporting of child abuse, abandonment, or neglect by *any person* to the Department of Children and Family Services (DCF) (current law: duty to report child abuse, etc., is limited to a parent, legal custodian, caregiver, or other person responsible for the child’s welfare).
- Creates two new reporting violations for which a Florida College System institution, state university, or nonpublic college, university, or school is subject to a \$1 million fine for each reporting violation and loss of *all* state funding for a period of 2 years. These violations involve:
 - Personnel of the Florida College System institution, etc., who knowingly and willfully fail to report known or suspected child abuse, etc., committed on the property of the institution, etc., or during an event or function sponsored by the institution, etc., or who knowingly and willfully prevent another person from doing so.
 - A law enforcement agency of the institution, etc., which fails to transmit to prosecutorial authorities any report of known or suspected child abuse, etc., committed on the property of the institution, etc., or during an event or function sponsored by the institution, etc.
- Repeals s. 787.05, F.S., which punishes unlawfully obtaining labor and services, and s. 796.045, F.S., which punishes sex trafficking.
- Amends findings, provisions regarding legislative intent, definitions of relevant terms, and elements of the current human trafficking offense in s. 787.06, F.S.
- Makes the current human trafficking offense a first degree felony (current law: second degree felony), and creates several new human trafficking offenses (which are first degree felonies,

first degree felonies punishable by a term of imprisonment not exceeding life, or life felonies) and ranks these offenses in Level 9 or Level 10 of the offense severity ranking chart of the Criminal Punishment Code.

- Excludes from evidence the sexual history or history of commercial sexual activity of a person alleged to have been trafficked if the court finds at a hearing outside the presence of the jury that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.
- Authorizes prosecution of a corporation under s. 787.06, F.S., for an act or omission constituting a crime under that statute only if an agent of the corporation performs the conduct that is an element of the crime while acting within the scope of her or his office or employment and on behalf of the corporation and the commission of the crime was authorized, requested, commanded, performed, or within the scope of her or his employment on behalf of the corporation or constituted a pattern of illegal activity that an agent of the company knew or should have known was occurring.
- Provides that training on methods by which the victimization of children by human traffickers occurs shall be included in the current training on human trafficking crime prevention and investigation included in every basic skills course required for law enforcement officers to obtain initial certification, and requires that every advanced training program on human trafficking also include the methods by which victimization of children by human traffickers occurs.
- Requires the DCF to develop guidelines for serving children who have been victims of human trafficking and produce a report to the Legislature detailing the DCF's plan by June 1, 2013. The bill also specifies elements that must, at a minimum, be included in the plan.
- Reclassifies the felony or misdemeanor degree of any violation of ch. 796, F.S., other than s. 796.03, F.S., or s. 796.035, F.S., in which a minor engages in prostitution, lewdness, assignation, sexual conduct, or other conduct as defined in or prohibited by ch. 796, F.S., but the minor is not the person charged with the violation.
- Specifies that the current civil penalty of \$500 assessed against a person who solicits, induces, entices, or procures another to commit prostitution, lewdness, or assignation is in addition to any penalty provided under s. 775.082, F.S., s. 775.083, F.S., or, if applicable, s. 775.084, F.S.
- Authorizes the court entering judgment for a conviction where the arresting charge was a violation of s. 796.07, F.S., to vacate the judgment at any time after its entry upon motion of the defendant, with the consent of the state attorney, upon the ground that the defendant's participation in the offense was a result of having been a victim of trafficking under s. 787.06, F.S., or trafficking in persons under the federal Trafficking Victims Protection Act.
- Authorizes forfeiture of all real and personal property of every kind used or intended for use in the course of, derived from, or realized through a violation of s. 787.06, F.S.
- Broadens the current authority of the Department of Legal Affairs to award a one-time payment of up to \$1,500 on any one claim and a lifetime maximum of \$3,000 to certain domestic violence victims to include such awards to certain victims of sexual violence who reasonably fear for their safety.
- Provides that a violation of s. 787.06, F.S., as it relates to commercial sexual activity, is considered "child molestation" and a "sexual offense" for the purpose of s. 90.04, F.S., which provides that in a criminal case in which the defendant is charged with a crime involving child molestation, evidence of the defendant's commission of other crimes, wrongs, or acts of

child molestation is admissible and may be considered for its bearing on any matter to which it is relevant.

This bill substantially amends ss. 39.01, 39.201, 39.205, 39.302, 90.404, 772.102, 787.06, 794.056, 796.035, 796.07, 895.02, 921.0022, 932.701, 938.085, and 960.198, F.S.; creates s. 796.036, F.S.; and repeals ss. 787.05 and 796.045, F.S.

II. Present Situation:

Efforts by the DCF and Other Agencies and Entities to Address Human Trafficking

The DCF has provided the following information regarding human trafficking and efforts by the DCF and other agencies and entities to address it.

In the wake of two child molestation cases that occurred at out-of-state universities there are concerns that the state's current child abuse, abandonment and neglect reporting and investigation requirements may not be adequately protecting Florida's children.

Additionally, the number of identified domestic and international human trafficking instances within the State continues to grow. Human trafficking occurs within a wide range of industries, including factories, agriculture, restaurants and hotels, as well as in domestic servitude and the sex industry. The U.S. Department of State's Trafficking in Persons Report includes a number of common types of trafficking: forced labor, sex trafficking, bonded labor, debt bondage, involuntary domestic servitude, child soldiers, and child sex trafficking. Statistics on trafficking vary from several hundred thousand to more than two million victims each year, but under any scenario the problem is significant and increasing.

With multiple ports of entry, several international airports, tourism industry, sex industry and agriculture industry, Florida is a principal and profitable destination for individuals engaging in human trafficking, both domestic and international, child and adult.

The Department of Children and Families has been very involved in the issue of human trafficking. Following is a summary of some of the department's significant activities:

2002-2003 Working Group Developed

"Florida Responds to Human Trafficking"

The department created a Working Group, in conjunction with the FSU Center for the Advancement of Human Rights, to describe human trafficking in Florida, the existing social services and law enforcement responses and make recommendations for additional actions.

Creation of Florida's Unaccompanied Refugee Minor Program

In 2003, at the request of the HHS Office of Refugee Resettlement, the department agreed to initiate an Unaccompanied Refugee Minor program in Florida. The URM program provides federally funded foster care for clients eligible for refugee services, including child victims of human trafficking.

Passage of Florida Statute Allowing Hotline Calls for Human Trafficking

During the 2006 Legislative Session, the department supported SB 1080, which included a change to the law governing calls to the Florida Abuse Hotline. This change expanded the department's jurisdiction to include children who have no apparent parent, custodian or adult relative to provide care and supervision. Calls related to trafficking victims were allowed under this section for children where there was no apparent caregiver relationship.

Creation of Comprehensive Response to Identify Child Victims of Trafficking

The department launched a comprehensive process to identify child trafficking victims through the Hotline and protective investigations.

- Developed operating procedures, job aids and assessment tools to identify trafficking situations.
- Conducted trainings for all the Florida Abuse Hotline staff.
- Presented public awareness training at the “Dependency Summit,” the “Child Protection Team Statewide Meeting,” the “Joint Statewide Supportive Housing and Homeless Conference,” and the “Florida Statewide Prevention Conference.”

Statewide Task Force on Human Trafficking

The Center for the Advancement of Human Rights issued a Strategic Plan with more than 188 recommendations for state agencies, local organizations and individuals to combat trafficking in Florida. The Task Force issued an Implementation Report identifying the progress made on implementing the recommendations. The Task Force concluded in June 2011.

Twelve local Trafficking Task Forces continue in Florida to coordinate efforts at a local level. The department created a Statewide Working Group that conducts quarterly conference calls to facilitate communication and collaboration among the different Task Forces.¹

Human Trafficking Statute

Section 787.06, F.S., punishes human trafficking, which is defined in the statute as transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport. The specific offense that is punished as a second degree felony involves knowingly:

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

The statute defines “forced labor or services” as labor or services obtained from a person by:

¹ Staff Analysis and Economic Impact (SB 1816), Department of Children and Family Services, dated January 17, 2012 (on file with the Senate Committee on Criminal Justice).

- Using or threatening to use physical force against that person or another person;
- Restraining, isolating, or confining or threatening to restrain, isolate, or confine that person or another person without lawful authority and against her or his will;
- Using lending or other credit methods to establish a debt by that person or another 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 that person or another person;
- Causing or threatening to cause financial harm² to any person; or
- Fraud or coercion.

For a discussion of the provisions of ss. 39.01, 39.201, 39.205, 39.302, 90.404, 772.102, 787.05, 794.056, 796.035, 796.045, 796.07, 895.02, 921.0022, 932.701, 938.085, and 960.198, F.S., amended or repealed by the bill, see the “Effect of Proposed Changes” section of this analysis.

III. Effect of Proposed Changes:

Section 1 amends s. 39.01, F.S., the definitions section of ch. 39, F.S. It deletes the current definition of the term “other person responsible for a child’s welfare.”

Section 2 amends s. 39.201, F.S., relating to mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; and the central abuse hotline. Currently, this statute provides, in part, that any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian caregiver, or other person responsible for the child’s welfare shall report such knowledge or suspicion to the DCF. The bill requires this reporting when any person knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by *any person*. A conforming change is made to the report provision to reflect this change.

Section 3 amends s. 39.205, F.S., which addresses penalties for acts relating to reporting child abuse, abandonment, or neglect. The bill creates two new reporting violations for which a Florida College System institution, state university, or nonpublic college, university, or school, as defined in s. 1000.21, F.S., or s. 1005.02, F.S., is subject to a \$1 million fine for each reporting violation and loss of *all* state funding, including the funds under the Florida Resident Access Grant program, for a period of 2 years. These violations involve:

- Personnel of the Florida College System institution, etc., who knowingly and willfully fail to report known or suspected child abuse, etc., committed on the property of the institution, etc., or during an event or function sponsored by the institution, etc., or who knowingly and willfully prevent another person from doing so.

² The statute defines “financial harm” as including extortionate extension of credit, loan sharking as defined in s. 687.071, F.S., or employment contracts that violate the statute of frauds as provided in s. 725.01, F.S.

- A law enforcement agency of the institution, etc., which fails to transmit to prosecutorial authorities any report of known or suspected child abuse, etc., committed on the property of the institution, etc., or during an event or function sponsored by the institution, etc.

Section 4 amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment, or neglect. Currently, this statute, provides, in part, that the DCF shall conduct a child protective investigation of each report of institutional child abuse, abandonment, or neglect. Upon receipt of a report that alleges that an employee or agent of the DCF, or any other entity or person covered by s. 39.01(33) or (47), F.S., acting in an official capacity, has committed an act of child abuse, etc., the DCF shall initiate a child protective investigation as provided in the statute. The bill deletes reference to s. 39.01(47), F.S. This change is conforming since Section 1 of the bill deletes the current definition of the term “other person responsible for a child’s welfare,” which is contained in s. 39.01(47), F.S.

Section 5 repeals s. 787.05, F.S., which punishes unlawfully obtaining labor and services.

Section 6 amends s. 787.06, F.S., the human trafficking statute, as follows:

- Amends legislative findings to indicate that many Florida youth are trafficked within the state.
- Amends legislative intent provision to indicate that it is the intent of the Legislature that the DCF and other state agencies cooperate with other state, local, and federal agencies (‘local’ agencies are not currently mentioned) to ensure that victims of human trafficking can access social services and benefits, including those made available to victims of sexual and domestic violence, to alleviate their plight (services and benefits “made available to victims of sexual and domestic violence” are not currently mentioned).
- Provides the following additional findings and legislative intent:

The Legislature finds that sex trafficking is a large part of human trafficking and that children are often the victims of sex trafficking by becoming prostitutes. It is the intent of the Legislature to protect children from sexual exploitation. The Legislature finds that children are at an increased risk of being exploited because they are psychologically less developed than adults. Children may perceive the persons who exploit them for purposes of prostitution as protectors, parental surrogates, boyfriends, or girlfriends and they may be uncooperative with the attempts of law enforcement to prosecute these persons. It is the intent of the Legislature to provide liability for persons who benefit financially or receive anything of value knowing or in reckless disregard of the fact that children will be caused to engage in prostitution. It is the intent of the Legislature to prevent those persons from using more experienced prostitutes to recruit and manage new child prostitutes in order to distance themselves from overt criminal acts.

- Defines the term “commercial sexual activity” as any violation of ch. 796, F.S., or any offense that is in violation of a law of any other jurisdiction if the elements of such offense are substantially similar to the elements of any offense contained in ch. 796, F.S., or an attempt to commit any such offense.
- Modifies the current definition of the term “forced labor or services” to include labor or services obtained from a person by:

- Enticing or luring any person by fraud, deceit, or coercion (currently the definition only mentions fraud or coercion).
- Providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03, F.S., to that person for the purpose of compelling that person to engage in labor or sexual servitude against her or his will.
- Modifies the definition of the term “human trafficking” to mean transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation of that person for transport. (The current definition only includes transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport.)
- Specifies in the modified definition of the term “human trafficking” that exploitation includes, but is not limited to, the exploitation of commercial sexual activity of others or other forms of sexual exploitation, forced labor or services, slavery, practices similar to slavery, forced marriage, servitude, or the removal of organs.
- Defines the term “labor” as work of economic or financial value.
- Modifies the definition of the term “maintain” to include making possible the continued performance of labor service. (The current definition only speaks to securing continued performance of labor services.)
- Defines the term “obtain” as, in relation to labor or services, to secure performance thereof.
- Defines the term “services” as an ongoing relationship between a person and an actor in which the person performs activities under the supervision of or for the benefit of the actor.
- Specifies in the definition of the term “services” that commercial sexual activity, production of pornography, and sexually explicit performances are forms of services under s. 787.06, F.S.
- Defines the term “sexually explicit performance” as a live or public act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons.
- Defines the term “venture” as any group of two or more individuals associated in fact, whether or not a legal entity.
- Revises the elements and penalties of the current human trafficking offense found at s. 787.06(3), F.S. Currently, this subsection provides that it is a second degree felony³ 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 to benefit financially by receiving anything of value from participation in a venture that has subjected a person to forced labor or services.

As revised, the offense is a first degree felony⁴ and applies to any person who knowingly or in reckless disregard of the facts engages, 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. Additionally, it is provided that for each instance of human trafficking of any individual, a separate crime is committed and a separate punishment is authorized.

³ The maximum term of imprisonment for a second degree felony is 15 years in state prison. Section 775.082., F.S.

⁴ The maximum term of imprisonment for a second degree felony is generally 30 years in state prison, though the Legislature may provide by statute for a term of imprisonment not exceeding life imprisonment. Section 775.082., F.S.

- Creates a new first degree felony trafficking offense that applies to any person who knowingly or in reckless disregard of the facts engages in human trafficking and who does so by the transfer or transport of any individual from outside the state to within the state or from one jurisdiction within this state to another. Additionally, it is provided that for each instance of human trafficking of any individual from outside this state to within the state or from one jurisdiction within this state to another, a separate crime is committed and a separate punishment is authorized.
- Creates a new first degree felony trafficking offense punishable by imprisonment for a term of years not exceeding life⁵ that applies to any person who knowingly or in reckless disregard of the facts engages in human trafficking in which a child under the age of 18 is involved. Additionally, it is provided that for each instance of human trafficking of a child under the age of 18, a separate crime is committed and a separate punishment is authorized. Further, in a prosecution for this offense in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained, or maintained, the state need not prove that the defendant knew that the person had not attained the age of 18 years.
- Creates a new life felony⁶ trafficking offense that applies to any person who knowingly or in reckless disregard of the facts engages in human trafficking in which any child under the age of 15 is involved. Additionally, it is provided that for each instance of human trafficking of a child under the age of 15, a separate crime is committed and a separate punishment is authorized. Further, in a prosecution of the offense in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained, or maintained, the state need not prove that the defendant knew that the person had not attained the age of 15 years.
- Creates a new life felony trafficking offense that applies to any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge that, as a consequence of the sale or transfer, the minor will engage in commercial sexual activity or forced labor or services.
- Excludes from evidence the sexual history or history of commercial sexual activity of a person alleged to have been trafficked if the court finds at a hearing outside the presence of the jury that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.
- Authorizes prosecution of a corporation under s. 787.06, F.S., for an act or omission constituting a crime under that statute only if an agent of the corporation performs the conduct that is an element of the crime while acting within the scope of her or his office or employment and on behalf of the corporation and the commission of the crime was authorized, requested, commanded, performed, or within the scope of her or his employment on behalf of the corporation or constituted a pattern of illegal activity that an agent of the company knew or should have known was occurring.
- Provides that training on methods by which the victimization of children by human traffickers occurs shall be included in the current training on human trafficking crime

⁵ *Id.*

⁶ The maximum term of imprisonment for a life felony is generally life imprisonment. Section 775.082, F.S.

prevention and investigation included in every basic skills course required for law enforcement officers to obtain initial certification.

- Requires that every advanced training program on human trafficking also include the methods by which victimization of children by human traffickers occurs.
- Requires the DCF to develop guidelines for serving children who have been victims of human trafficking and produce a report to the President of the Senate and the Speaker of the House of Representatives detailing the DCF's plan by June 1, 2013, which, at a minimum must include the following elements:
 - An assessment of need: the DCF shall estimate the number of children who have been the victims of human trafficking and who are in need of services currently and over the next 5 years.
 - Residential services: The DCF shall consider all options for treating children who have been victims of human trafficking and provide recommendations on the best options of care for these children and reunification with the child's family, if appropriate.
 - Other services: The DCF shall recommend specific service needs, including, but not limited to, assessment, security, crisis, and behavioral health services that are needed for children who have been victims of human trafficking.
 - Coordination: The DCF shall consider and recommend partnership opportunities with law enforcement and other state and local governmental entities to best serve children who have been victims of human trafficking.

Section 7 amends s. 796.035, F.S., which punishes selling or buying of minors into human sex trafficking or prostitution, to delete reference to "sex trafficking" and substitute "human trafficking" in the statute title and text of the statute.

Section 8 creates s. 796.036, F.S., which reclassifies as follows the felony or misdemeanor degree of any violation of ch. 796, F.S., other than s. 796.03, F.S., or s. 796.035, F.S., in which a minor engages in prostitution, lewdness, assignation,⁷ sexual conduct, or other conduct as defined in or prohibited by ch. 796, F.S., but the minor is not the person charged with the violation:

- A second degree misdemeanor is reclassified to a first degree misdemeanor.
- A first degree misdemeanor is reclassified to a third degree felony.
- A third degree felony is reclassified to a second degree felony.
- A second degree felony is reclassified to a first degree felony.
- A first degree felony is reclassified to a life felony.

Section 9 repeals s. 796.045, F.S., which punishes sex trafficking.

Section 10 amends s. 796.07, F.S., relating to prostitution, to:

- Specify that the current civil penalty of \$500 assessed against a person who solicits, induces, entices, or procures another to commit prostitution, lewdness, or assignation is in addition to

⁷ "Assignation" is the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement. Section 796.07(1)(c), F.S.

any penalty provided under s. 775.082, F.S., s. 775.083, F.S., or, if applicable, s. 775.084, F.S.

- Authorize the court entering judgment for a conviction where the arresting charge was a violation of s. 796.07, F.S., to vacate the judgment at any time after its entry upon motion of the defendant, with the consent of the state attorney, upon the ground that the defendant's participation in the offense was a result of having been a victim of trafficking under s. 787.06, F.S., or trafficking in persons under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.⁸

This motion must be made with due diligence, after the defendant has ceased to be a victim of such trafficking or has sought services for victims of such trafficking, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking who may be jeopardized by the bringing of such motion, or for other reasons consistent with the purpose of this provision.

Official documentation of the defendant's status as a victim of sex trafficking or trafficking in persons at the time of the offense from a federal, state, or local government law enforcement agency or prosecuting authority creates a presumption that the defendant's participation in the offense was a result of having been a victim of sex trafficking or trafficking in persons, but is not required for granting a motion under this subsection.

Section 11 amends s. 932.70, F.S., the definitions section of the Florida Contraband Forfeiture Act, to authorize forfeiture of all real and personal property of every kind used or intended for use in the course of, derived from, or realized through a violation of s. 787.06, F.S.

Section 12 amends s. 960.198, F.S., relating to relocation assistance for victims of domestic violence. Under this statute, the Department of Legal Affairs is authorized to award a one-time payment of up to \$1,500 on any one claim and a lifetime maximum of \$3,000 to a victim of domestic violence who needs immediate assistance to escape from a domestic violence environment, if specific criteria are met. The statute is amended to also authorize these payments for a victim of sexual violence who reasonably fears for her or his safety. Conforming changes are made to the statute title and text to reference "sexual violence" and, relevant to victims of sexual violence, require that the victim's need for assistance is certified by a certified rape crisis center.

Section 13 amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to rank in Level 9 the current trafficking offense in s. 787.06(3), F.S. (which the bill makes a first degree felony) and the new first degree felony trafficking offense involving transfer or transport into this state. Additionally, this statute is amended to rank in Level 10 the new first degree felony trafficking offense (punishable by up to life) involving minors, the new life felony trafficking offenses involving a child under 15 and sale or transfer of a minor, and the

⁸ It appears this provision would have to operate prospectively, i.e., for crimes committed on or after the effective date of the act because Article X, section 9, of the Florida Constitution provides that repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.

current first degree felony offense in s. 796.035, F.S., which, as modified by the bill, involves selling or buying of minors into human trafficking or prostitution.⁹

Section 14 amends s. 90.04, F.S., relating to admissibility of character evidence. This statute provides, in part, that in a criminal case in which the defendant is charged with a crime involving child molestation, evidence of the defendant's commission of other crimes, wrongs, or acts of child molestation is admissible and may be considered for its bearing on any matter to which it is relevant. The statute defines the terms "child molestation" and "sexual offense" as conduct prohibited by any of a number of specified statutes or statutory provisions. The amendment to s. 90.04, F.S., modifies the definitions of these terms to add reference to s. 787.06, F.S., only as it relates to commercial sexual activity.

Section 15 amends s. 772.102, F.S., the definitions section for ch. 772, F.S., the Civil Remedies for Criminal Practices Act. The civil remedies available under this chapter only apply to "criminal activity," as defined. "Criminal activity" is, in part, defined as committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any crime that is chargeable by indictment or information under any of a number of specified statutes or chapters. This definition is amended to delete reference to s. 796.045, F.S., which Section 9 of the bill repeals.

Section 16 amends s. 794.056, F.S., relating to the Rape Crises Program Trust Fund. This fund is created within the Department of Health to provide funds for rape crisis centers in this state. Trust fund moneys must be used exclusively for the purpose of providing services for victims of sexual assault. Funds credited to the trust fund consist of those funds collected as an additional court assessment in each case in which a defendant pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, an offense provided in any of number of specified statutes or statutory provisions. The statute is amended to delete reference to s. 796.045, F.S., which Section 9 of the bill repeals.

Section 17 amends s. 895.02, F.S., the definitions section of the Florida RICO (Racketeer Influenced and Corrupt Organization),¹⁰ which punishes "racketeering activity." The term "racketeering activity" is, in part, defined as committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any crime that is chargeable by petition, indictment or information under any of a number of specified statutes, statutory provisions, or chapters. This definition is amended to delete reference to s. 796.045, F.S., which Section 9 of the bill repeals.

Section 18 amends s. 938.085, F.S., which provides, in part, that in addition to any sanction imposed when a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a violation of any of a number of specified statutes or statutory provisions, the court shall impose a surcharge of \$151.¹¹ The statute is amended to delete reference to s. 796.045, F.S., which Section 9 of the bill repeals.

⁹ This offense is currently not ranked in the chart and defaults to a Level 7 pursuant to s. 921.0023, F.S.

¹⁰ Sections 895.01-895.06, F.S.

¹¹ Payment of the surcharge is a condition of probation, community control, or any other court-ordered supervision. This surcharge is deposited into the Rape Crisis Program Trust Fund.

Section 19 provides that the act takes effect October 1, 2012.

Other Potential Implications:

The DCF has provided the following comments regarding Section 2 of the bill:

The proposed modifications to Chapter 39 would radically alter the mission of the Florida Department of Children and Families. Currently the department focuses on ensuring the overall safety and well-being of children in the hands of their parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child's welfare. In those cases where an allegation of abuse, abandonment, or neglect is verified, the department then attempts to ensure that a child is placed in a safe environment and attempts to engage the family in services that may help to mitigate future acts of abuse, abandonment or neglect.

The expansion of the department's investigative requirements to include acts of abuse, abandonment or neglect by individuals that have no direct link or effect on the immediate or long term safety of a child could potentially shift the department's investigative focus away from ensuring the current and future safety of the child and more towards that of a determination of guilt or innocence. This is largely due to the fact that Florida Department of Children and Families has no mechanism to protect children from individuals that have no familial or professional connection to the child. Additionally, this potential shift could place the department's investigative entities into conflict with local law enforcement given that both agencies would now be responsible for investigating criminal acts that have no immediate or long term child safety issue attached to the case.

Finally, the broad language would greatly expand reportable acts of abuse, abandonment and neglect to include instances such as fighting between teens, cyber bullying, and official acts taken by law enforcement officers, employees of municipal or county detention facilities, or employees of the Department of Corrections.¹²

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹² See footnote 1.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Fiscal impact and other information regarding the bill was requested from the Department of Education, the Florida Department of Law Enforcement, and the Division of Risk Management. Agency analyses were not received at or prior to the time this bill analysis was completed.

POTENTIAL DCF IMPACT

Section 2 of the bill amends s. 39.201, F.S., relating to mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; and the central abuse hotline. Currently, this statute provides, in part, that any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian caregiver, or other person responsible for the child's welfare shall report such knowledge or suspicion to the DCF. The bill requires this reporting when any person knows, or has reasonable cause to suspect that a child is abused, abandoned, or neglected by *any person*.

The DCF states: "As written, the changes to Chapter 39 substantially alter the legal foundation for the department's child protective investigation function in a manner that expands the potential reportable incidents of abuse or neglect. Such expansion would create an unknown but potentially sizeable impact on the workload of the abuse hotline and child protective investigation resources."

The DCF has provided separate calculations for three possible fiscal impact scenarios using data from three different sources.¹³

¹³ Fiscal Note (HB 1355), Department of Children and Family Services, dated January 30, 2012 (on file with the Senate Committee on Criminal Justice. Although the analysis is to the child abuse reporting provision of HB 1355, SB 1816 contains the same provision. All information that follows on potential fiscal impact on the DCF is from this analysis.

Option #1: \$23,056,186

The following statewide data on “Incidents of Crime and Violence” in Florida schools was obtained from the Florida Department of Education’s website

<http://www.fldoe.org/eias/eiaspubs/fsir.asp> (2007-08 FSIR Indicators):

- Battery: 8,600 incidents
- Bullying: 5,730 incidents
- Fighting: 30,412 incidents
- Homicide: 3 incidents
- Kidnapping: 4 incidents
- Sexual offense: 1,287 incidents
- Sexual battery: 126 incidents
- Sexual harassment: 2,150 incidents
- Threat/Intimidation: 5,961 incidents

Total Incidents of Crime and Violence (approximate): 54,000 incidents/year

The DCF used this statewide data to calculate the estimated fiscal impact on the Florida Abuse Hotline.

Number of screened out Hotline Reports (i.e. Non caregiver): 13,200 per year

(approximately 1,100 screened out Hotline reports each month multiplied by 12 months)

Number of screened out reports alleging child on child sexual abuse involving children over the age of 12: 2,600 per year (approximately 50 screened out reports alleging child on child sexual abuse involving children over the age of 12 multiplied by 12 months)

Total number of incidents and reports screened out Hotline reports: 69,800 per year (54,000 incidents of Crime and Violence + 13,200 screened out Hotline reports + 2,600 screened out reports alleging child on child sexual abuse involving children over the age of 12)

Based on the total number of incidents and reports screened out Hotline reports, the DCF estimates that 17,400 reports will be screened out (25% average screen out rate) and approximately 52,400 reports will be investigated.

In order to meet this increased investigation case load, the DCF estimates that it will need \$23,056,186 annually to fund the additional 497 FTEs.

- \$16,480,114.56 for 364 CPI FTE positions needed to support increase
 - 52,400 total cases/144 new investigations per year for each CPI = 364 CPI FTE positions
 - 364 CPI FTEs multiplied by \$45,275.04 average annual salary = \$16,480,114.56
- \$3,569,272.26 for 61 CPI Supervisor FTE positions needed to support increase
 - 364 CPI FTEs/6 CPI FTEs per supervisor = 61 CPI Supervisor FTE positions

- 61 CPI Supervisors multiplied by \$58,512.66 average annual salary = \$3,569,272.26
- \$2,578,318.08 for 64 FTE Hotline Counselors to support a total call increase of 69,800 calls (a 17 percent call volume increase)
 - Based on increased call volume of 69,800 calls per year, this would require an additional 64 FTE Hotline Counselors
 - 64 FTE Hotline Counselors multiplied by \$40,286.22 average annual salary = \$2,578,318.08
- \$428,481.28 for 8 Hotline Supervisor FTE positions
 - 64 FTE Hotline Counselors/8 hotline counselors per supervisor = 8 Hotline Supervisor FTE positions
 - 8 Hotline Supervisor FTEs multiplied by \$53,560.16 average annual salary = \$428,481.28

Option #1 TOTAL BUDGET IMPACT: \$23,056,186.18

Option #2: \$18,774,046

The DCF could anticipate an approximate 20% increase in reports for investigation. Last fiscal year there were approximately 207,681 reports sent to the field for response and assessment. That would be an increase of 41,536 reports for field investigation and response. It would be anticipated that there would be more calls to the Hotline that would be screened out than sent to the field. The Hotline currently screens out approximately 25 percent of child calls to the Hotline. This would be approximately 10,385 additional reports screened at the Hotline for a total contact volume of 51,921 reports to the Hotline.

In order to meet this increased investigation case load, the DCF estimates that it will need \$18,774,046 annually to fund the additional 406 FTEs.

- \$13,039,211.52 for 288 CPI FTE positions needed to support increase
 - 41,536 reports for field investigation/144 new investigations per year for each CPI = 288 CPI FTE positions
 - 288 CPI FTEs multiplied by \$45,275.04 average annual salary = \$13,039,211.52
- \$2,808,607.68 for 48 CPI Supervisor FTE positions needed to support increase
 - 288 CPI FTEs /6 CPI FTEs per supervisor = 48 CPI Supervisor FTE positions
 - 48 CPI Supervisors multiplied by \$58,512.66 average annual salary = \$2,808,607.68
- \$2,497,745.64 for 62 FTE Hotline Counselors to support a total call increase of 51,921calls (a 15 percent call volume increase)
 - Based on increased call volume of 51,921calls per year, this would require an additional 62 FTE Hotline Counselors
 - 62 FTE Hotline Counselors multiplied by \$40,286.22 average annual salary = \$2,497,745.64
- \$428,481.28 for 8 Hotline Supervisor FTE positions
 - 62 FTE Hotline Counselors/8 hotline counselors per supervisor = 8 Hotline Supervisor FTE positions

- 8 Hotline Supervisor FTEs multiplied by \$53,560.16 average annual salary = \$428,481.28

Option #2 TOTAL BUDGET IMPACT: \$18,774,046.12

Option #3: \$16,202,101

Crimes Against Children Estimates for Florida

1997 Office of Juvenile Justice and Delinquency Prevention (OJJDP) “Characteristics of Crimes Against Juveniles study found that while minors account for 26 percent of the population in the twelve states that were analyzed they accounted for only 12 percent of reported criminal victims.

The 2010 United States Census data indicated that 21.3 percent of the Florida population is between the ages of 0 to 17 years old.

26% (1997 OJJDP study percentage juvenile population) / 12% (1997 OJJDP study percentage of reported criminal acts committed against juveniles) = 21.3%

21.3% (FL juvenile population)/X

X= 9.8% (Florida estimated percentage of criminal acts committed against children)

2010 United States Census Data Florida Population = 18,801,310

18,810,301 (2010 Florida Population) X 21.3% = 4,004,679 (2010 Florida Juvenile Population) 4,004,679 X 9.8% = 392,459 estimated number of reported juvenile victims of crime

392,459 (Florida estimated number of reported juvenile victims of crime) X 10% (Percentage reported stranger perpetrator criminal acts committed against children as estimated by the author of the Characteristics of Crimes Against Juveniles study [Compton call to author 1/27/12])

Estimated reported stranger criminal acts committed against minors that are currently not reportable to the Hotline = 39,246

1997 OJJDP study estimated Robbery/Nonviolent reported criminal acts committed against children = 5%

39,246 X 5% = 37,284 (Florida estimated percentage violent reported stranger perpetrator criminal acts committed against children)

Based on the above data, the DCF estimates that it will need \$16,202,101 annually to fund the additional 349 FTEs.

- \$11,726,235.36 for 259 CPI FTE positions needed to support increase
 - 37,284 reports of stranger perpetrator criminal acts committed against children/144 new investigations per year for each CPI = 259 CPI FTE positions
 - 259 CPI FTEs multiplied by \$45,275.04 average annual salary = \$11,726,235.36
- \$2,516,044.38 for 43 CPI Supervisor FTE positions needed to support increase
 - 259 CPI FTEs/6 CPI FTEs per supervisor = 43 CPI Supervisor FTE positions
 - 43 CPI Supervisors multiplied by \$58,512.66 average annual salary = \$2,516,044.38
- \$1,692,021.24 for 42 FTE Hotline Counselors to support a total call increase of 39,246 calls (a 17 percent call volume increase)
 - Based on increased call volume of 39,246 calls per year, this would require an additional 42 FTE Hotline Counselors
 - 42 FTE Hotline Counselors multiplied by \$40,286.22 average annual salary = \$1,692,021.24
- \$267,800.80 for 5 Hotline Supervisor FTE positions
 - 42 FTE Hotline Counselors/8 hotline counselors per supervisor = 5 Hotline Supervisor FTE positions
 - 5 Hotline Supervisor FTEs multiplied by \$53,560.16 average annual salary = \$267,800.80

Option #3 TOTAL BUDGET IMPACT: \$16,202,78

POTENTIAL PRISON BED IMPACT

The bill modifies the penalty of the current human trafficking offense and creates several new human trafficking felonies. All of these offenses are first degree felonies, first degree felonies punishable by imprisonment not exceeding life, or life felonies. The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill will have an indeterminate prison bed impact.

POTENTIAL IMPACT ON EDUCATIONAL INSTITUTIONS

Section 3 of the bill creates two new reporting violations for which a Florida College System institution, state university, or nonpublic college, university, or school, as defined in s. 1000.21, F.S., or s. 1005.02, F.S., is subject to a \$1 million fine for each failure and loss of state funding, including the funds under the Florida Resident Access Grant program, for a period of 2 years. It is uncertain if an institution, etc., subject to a \$1 million fine and loss of all state funding for a period of 2 years would be able to continue to operate.

Section 12 of the bill amends s. 960.198, F.S., relating to relocation assistance for victims of domestic violence. Under this statute, the Department of Legal Affairs is authorized to award a one-time payment of up to \$1,500 on any one claim and a lifetime maximum of \$3,000 to a victim of domestic violence who needs immediate assistance to escape from a domestic violence environment, if specific criteria are met. The statute is amended to also

authorize these payments for a victim of sexual violence who reasonably fears for her or his safety.

POTENTIAL IMPACT ON DEPARTMENT OF LEGAL AFFAIRS

HB 1355 contains a provision similar to Section 12 of SB 1816. The Department of Legal Affairs provided the following information relevant to the House bill:

- The 2010 Crime in Florida Annual Report indicated that there were 9,885 Forcible Sex Offenses. It is unknown how many of these forcible sex victims may have qualified as a domestic violence victim, as well. It is unknown how many would have requested relocation assistance as a sexual violence victim.
- Revenues for the Crimes Compensation Trust Fund are derived from the collection of state and federal criminal assessments. The funds are used to run the Crimes Compensation Program. Crime victims serviced by this program include victims of assault, battery, homicide, sexual offenses, domestic violence, driving while intoxicated, hit and run, stalking, robbery, terrorism, kidnapping, arson, and all other violent crimes. Eligible expenses currently paid by the victims compensation program include medical/dental, mental health treatment, crime scene clean-up, funeral/burial, wage loss, loss of support, disability, forensic sexual assault examinations, property loss (for elderly and disabled adults only), and relocations expenses for victims of domestic violence. Since Fiscal Year 2005-06, the claims workload has increased by 19.3 percent and the dollars paid has increased by 40 percent. However, the Crimes Compensation Trust Fund has had declining revenue collections in that time.
- In Fiscal Year 2010-11, the Crimes Compensation Trust Fund collected \$21,493,324 in revenues a 14 percent decrease from the previous fiscal year. Any additional payments to victims could reduce payments to all other victims.¹⁴

VI. Technical Deficiencies:

In its analysis of the bill, the DCF identified the following as “technical deficiencies” in the bill:

This bill repeals 787.05 which created a second degree felony for “unlawfully obtaining labor or services” through causing or threatening bodily harm, restraining or threatening to restrain a person without lawful authority, or withholding governmental records, identification or property. Repealing this crime was not mentioned in similar bills or elsewhere in statute. The Department has worked with victims of this crime, especially as it relates to withholding governmental records, identification and/or property.

Line 315 (amending section 787.06(2)(d), F.S., reads “forced marriage, servitude or the removal of organs.” Organ trafficking is the topic of conjecture in the human trafficking community. Some agencies and communities recognize organ trafficking as a form of human trafficking while others do not. It is not the movement, buying or selling of the organ that is trafficking in nature. It is the

¹⁴ See *House of Representatives State Analysis* (HB 1355), House Judiciary Committee, dated January 25, 2012.

method by which the organs are procured. While the movement, buying or selling might be illegal in certain countries, if they are harvested with the person's consent, no organ trafficking has taken place. To ensure the language is consistent with the other language being proposed, the line could read, "forced marriage, servitude or the removal of an individual's organs without their knowledge or consent.

Another option to erase the ambiguity in section 787.06, F.S., is to have "the removal of organs" amended to read "the removal of organs not authorized by a licensed physician in the state of Florida.

[Section] 796.035 states that "Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor..." The word "attempts" should be included after the phrase, "otherwise transfers custody or control of such a minor."

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.