

**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 Children, Families, and Elder Affairs Committee

BILL: SB 202

INTRODUCER: Senator Flores

SUBJECT: Sexual Exploitation

DATE: December 6, 2011      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Farmer	CF	<b>Pre-meeting</b>
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill creates the “Florida Safe Harbor Act” intended to provide a more coordinated response to address the child welfare service needs of sexually exploited children. Specifically, the bill:

- Provides legislative findings and intent and establishes legislative goals relating to the status and treatment of sexually exploited children in the dependency system;
- Amends the definitions of the terms “child who is found to be dependent” and “sexual abuse of a child” to reference sexual exploitation;
- Requires a law enforcement officer who takes a child for whom there is probable cause to believe that he or she has been sexually exploited into custody to deliver the child to a short-term safe house if one is available;
- Provides for a rebuttable presumption that placement of a child in a short-term safe house who is alleged to have been sexually exploited is necessary;
- Provides a process for the assessment and placement of sexually exploited children in a safe house, if available; provides for placement updates to the court during judicial review hearings; requires the establishment of special permanency teams; and provides for data collection relating to these placements by the Department of Children and Family Services (DCF or department);
- Provides definition for the terms, “child advocate,” “safe house,” “secure,” “sexually exploited child” and “short-term safe house”;
- Provides for services for sexually exploited children residing in a safe house;
- Increases the civil penalty for crimes related to prostitution to \$5,000 and provides for \$4,500 of that amount to be paid to the department to be used to fund safe houses and short-term safe houses;

- Provides that a victim of child sexual exploitation shall not be ineligible for victim compensation; and
- 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.

This bill substantially amends ss. 39.001, 39.01, 39.401, 39.402, 39.521, 796.07, 960.065, 985.115, 985.145, and 985.15 and creates ss. 39.524 and 409.1678 of the Florida Statutes.

## II. Present Situation:

### Background

The United Nations defines human trafficking as the recruitment, transportation, transfer, harboring, or receipt of persons by improper means such as force, abduction, fraud, or coercion for an improper purpose including forced labor or sexual exploitation. The U.S. Government defines severe form of human trafficking as:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>1</sup>

A victim need not be physically transported from one location to another in order for the crime to fall within these definitions.

While the annual Trafficking in Persons report addresses three main types of exploitation of children,<sup>2</sup> the National Center for Missing and Exploited Children states that there are many types of sexual exploitation involving children, including:

- Possession, manufacture, and distribution of child pornography;
- Child prostitution;
- Sex tourism involving children;
- Extra-familial child sexual molestation;
- Online enticement of children for sexual acts;
- Unsolicited obscene material sent to a child;
- Misleading domain names; and
- Misleading words or digital images on the internet.<sup>3</sup>

The United States not only faces an influx of international victims of sex trafficking, but also has its own problem of interstate sex trafficking of minors. While comprehensive research to

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<sup>1</sup> Trafficking Victims Protection Act of 2000. Public Law No. 106-386.

<sup>2</sup> Those include child sex trafficking, forced child labor and child soldiers. U.S. Department of State, Trafficking in Persons Report 2011. Retrieved December 2, 2011, from <http://www.state.gov/g/tip/rls/tiprpt/2011/>.

<sup>3</sup> National Center for Missing and Exploited Children. Exploited Children Division. Retrieved December 2, 2011, from [http://www.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en\\_US&PageId=218](http://www.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en_US&PageId=218).

document the number of children engaged in prostitution in the United States is lacking, it is estimated that about 293,000 American youth are currently at risk of becoming victims of commercial sexual exploitation.<sup>4</sup> The majority of American victims of commercial sexual exploitation tend to be runaway or thrown away youth who live on the streets and become victims of prostitution.<sup>5</sup> 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>6</sup>

Other young people are recruited into prostitution through forced abduction, pressure from parents, or through deceptive agreements between parents and traffickers.<sup>7</sup> Once these children become involved in prostitution, they are often forced to travel far from their homes and as a result are isolated from their friends and family.<sup>8</sup> Few children in this situation are able to develop new relationships with peers or adults other than the person who is victimizing them.<sup>9</sup> The lifestyle of such children revolves around violence, forced drug use and constant threats.<sup>10</sup>

Among children and teens living on the streets in the United States, involvement in commercial sex activity is a problem of epidemic proportion. Approximately 55% of street girls engage in formal prostitution.<sup>11</sup> Of the girls engaged in formal prostitution, about 75% worked for a pimp. 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.<sup>12</sup> About one-fifth of these children become entangled in nationally organized crime networks and are 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>13</sup> The average age at which girls first become victims of prostitution is 12-14. It is not only the girls on the streets that are affected. For boys and transgender youth, the average age of entry into prostitution is 11-13.<sup>14</sup>

### **National Center for Missing and Exploited Children**

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<sup>4</sup> Estes, R.J. and Weiner, N.A. *Commercial Sexual Exploitation of Children in the U.S, Canada and Mexico*, University of Pennsylvania, 2002. Retrieved December 2, 2011 from [http://www.sp2.upenn.edu/restes/CSEC\\_Files/Exec\\_Sum\\_020220.pdf](http://www.sp2.upenn.edu/restes/CSEC_Files/Exec_Sum_020220.pdf).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> U.S. Department of Justice, Child Exploitation and Obscenity Section. Domestic Sex Trafficking of Minors. Retrieved December 3, 2011 from <http://www.justice.gov/criminal/ceos/prostitution.html>. Also see Miko, F.T. *Trafficking in Women and Children: The U.S. and International Response*, (Updated July 7, 2006). Retrieved December 3, 2011, from <http://www.usembassy.it/pdf/other/RL30545.pdf>.

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

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Estes, R.J. and Weiner, N.A. *Commercial Sexual Exploitation of Children in the U.S, Canada and Mexico*, University of Pennsylvania, 2002. Retrieved December 2, 2011 from [http://www.sp2.upenn.edu/restes/CSEC\\_Files/Exec\\_Sum\\_020220.pdf](http://www.sp2.upenn.edu/restes/CSEC_Files/Exec_Sum_020220.pdf).

<sup>12</sup> *Id.*

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

<sup>14</sup> *Id.*

The National Center for Missing & Exploited Children (NCMEC) was started in 1984 as a not-for-profit corporation, mandated by Congress and working in partnership with the U.S. Department of Justice to serve as the national resource center and clearinghouse on missing and exploited children. NCMEC operates the national missing children's hotline, which has handled more than 2.4 million calls for service. NCMEC also operates the Congressionally-mandated CyberTipline, the "911 for the Internet," which has handled more than 793,900 reports of child sexual exploitation, and operates the Child Victim Identification Program, which has reviewed more than 31 million child pornography images and videos in order to identify and rescue child victims, and has disseminated more than 22,000 reports to prosecutors in support of their cases against child sexual predators. With regard to child prostitution and trafficking specifically, the center has received 8,408 leads and reports from the public through the CyberTipline, including 1,703 reports of known missing children being prostituted.<sup>15</sup>

In June 2003, the FBI in conjunction with the Department of Justice Child Exploitation and Obscenity Section and NCMEC launched the Innocence Lost National Initiative. Combined efforts were aimed at addressing the growing problem of domestic sex trafficking of children in the U. S. In the seven years since its inception, the initiative has resulted in the development of 39 dedicated task forces and working groups throughout the U.S. involving federal, state and local law enforcement agencies working in tandem with U.S. Attorney's Offices.<sup>16</sup>

To date, these groups have worked successfully to rescue nearly 1,200 children. Investigations have successfully led to the conviction of more than 600 pimps, madams, and their associates who exploit children through prostitution. These convictions have resulted in lengthy sentences including multiple 25-year-to-life sentences and the seizure of real property, vehicles, and monetary assets.<sup>17</sup>

### **Federal Law**

In October 2000, the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA)<sup>18</sup> made human trafficking a federal crime and made certain victims of a severe form of human trafficking<sup>19</sup> eligible for federally funded or administered benefits and services to the same extent as refugees. Prior to that, no comprehensive federal law existed to protect victims of trafficking or to prosecute their traffickers. The VTVPA was reauthorized and amended in 2003.<sup>20</sup> Effective December 2003, the act extended the eligibility for federally-funded or administered benefits and services to certain family members of victims.

To be eligible for benefits and services, an individual must be certified as a victim of a severe form of human trafficking. The U.S. Department of Health and Human Services, Administration for Children & Families (ACF), Office of Refugee Resettlement (ORR) is the federal agency

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<sup>15</sup> Statement Of Ernie Allen, President & CEO, The National Center For Missing & Exploited Children, to the Congressional Human Trafficking Caucus. *Child Sex Trafficking in America*. February 18, 2010

<sup>16</sup> Federal Bureau of Investigation. Innocence Lost National Initiative, Retrieved December 3, 2011, from [http://www.fbi.gov/about-us/investigate/vc\\_majorthefts/cac/innocencelost](http://www.fbi.gov/about-us/investigate/vc_majorthefts/cac/innocencelost).

<sup>17</sup> *Id.*

<sup>18</sup> Victims of Trafficking and Violence Protection Act of 2000. Public Law No. 106-386.

<sup>19</sup> *Id.*

<sup>20</sup> Trafficking Victims Protection Reauthorization Act of 2003. Public Law No. 108-193.

responsible for certifying trafficking victims. To receive certification, victims of trafficking must be willing to assist with the investigation and prosecution of traffickers. In addition, they must have completed a bona fide application for a T-Visa or they must have been granted continued presence status by U.S. Citizenship and Immigration Services for the purpose of contributing to the prosecution of the traffickers.<sup>21</sup>

Children under 18 years of age who have been subjected to a severe form of trafficking do not need to be certified to receive benefits; ORR will issue them a letter declaring them victims of a severe form of trafficking. The ORR provides information to state and local governments and service providers on the requirements for certification, the documents that victims of severe forms of trafficking are issued, and the procedures agencies should follow in confirming eligibility for benefits.<sup>22</sup>

## **Florida Law**

### *Criminal Law*

Florida law defines “prostitution” as the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.<sup>23</sup> Current law also provides 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, with knowledge that, as a consequence of the sale or transfer, the minor will engage in prostitution, perform naked for compensation, or otherwise participate in the trade of sex trafficking, commits a felony of the first degree.<sup>24</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 felony of the second degree. A person commits a felony of the first degree 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>25</sup>

In addition, there are a number of provisions in current law relating to penalties for crimes involving sexually related crimes and children, including, but not limited to:

- It is a second degree felony to procure a minor for prostitution or cause the minor to be prostituted;<sup>26</sup>
- It is a first degree misdemeanor to commit any act which causes, tends to cause, encourages, or contributes to a child becoming a delinquent or dependent child or a child in need of services; or induces or endeavors to induce, by act, threat, command, or

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<sup>21</sup> U.S. Department of Health and Human Services. Administration for Children and Families. Certification for Victims of Trafficking. Retrieved December 3, 2011 from [http://www.acf.hhs.gov/trafficking/about/cert\\_victims.pdf](http://www.acf.hhs.gov/trafficking/about/cert_victims.pdf).

<sup>22</sup> *Id.*

<sup>23</sup> s. 796.07, F.S.

<sup>24</sup> s. 796.035, F.S.

<sup>25</sup> s. 796.045, F.S.

<sup>26</sup> s. 796.03, F.S.

- persuasion, a child to commit or perform any act, follow any course of conduct, or live in a manner that causes or tends to cause such child to become or to remain a dependent or delinquent child or a child in need of services;<sup>27</sup>
- It is a second degree felony for any person who, knowing the character and content thereof, employs, authorizes, or induces a minor to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. It is also a second degree felony for any person who, knowing the character and content thereof, to produce, direct, or promote any performance which includes sexual conduct by a child less than 18 years of age;<sup>28</sup>
  - It is first degree felony for any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of the minor, or offers to sell or otherwise transfer custody of the minor, either: (1) with knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or (2) with intent to promote either the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct or the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct; and<sup>29</sup>
  - A person who encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity commits a second degree felony.<sup>30</sup>

## *Children*

### *Dependent Child*

The purposes of Chapter 39, F.S., proceedings relating to children, include, but are not limited to:

- Providing for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development; to ensure secure and safe custody; to promote the health and well-being of all children under the state's care; and to prevent the occurrence of child abuse, neglect, and abandonment.;
- Preserving and strengthening the child's family ties whenever possible, removing the child from parental custody only when his or her welfare cannot be adequately safeguarded without such removal; and
- Securing for the child, when removal of the child from his or her own family is necessary, custody, care, and discipline as nearly as possible equivalent to that which should have been given by the parents; and to ensure, in all cases in which a child must be removed from parental custody, that the child is placed in an approved relative home, licensed foster home, adoptive home, or independent living program that provides the most stable and potentially permanent living arrangement for the child, as determined by

<sup>27</sup> s. 827.04, F.S.

<sup>28</sup> s. 827.071, F.S.

<sup>29</sup> s. 847.0145, F.S.

<sup>30</sup> s. 800.04, F.S.

the court. All placements shall be in a safe environment where drugs and alcohol are not abused.<sup>31</sup>

Florida law defines a "child who is found to be dependent" as a child who is found by the court:

- To have been abandoned, abused, or neglected by the child's parent or parents or legal custodians;
- To have been surrendered to the department, the former HRS, or a licensed child-placing agency for purpose of adoption;
- To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the department, or the former HRS, after which placement, under the requirements of this chapter, a case plan has expired and the parent or parents or legal custodians have failed to substantially comply with the requirements of the plan;
- To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent or parents have signed a consent pursuant to the Florida Rules of Juvenile Procedure;
- To have no parent or legal custodians capable of providing supervision and care; or
- To be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents or legal custodians.<sup>32</sup>

In addition, current Florida law addresses the needs of immigrant children who may be eligible for special immigrant juvenile status under federal law and who are defined as a child who:

- Has been found dependent based on allegations of abuse, neglect, or abandonment;
- Is eligible for long-term foster care;
- Will have his or her best interest served by remaining in the United States; and
- Remains under the jurisdiction of the juvenile court.<sup>33</sup>

#### *Child in Need of Services (CINS)*

Current Florida law defines a "child in need of services" as a child for whom there is no pending investigation into an allegation or suspicion of abuse, neglect, or abandonment; no pending referral alleging the child is delinquent; or no current supervision by the Department of Juvenile Justice (DJJ) or the DCF for an adjudication of dependency or delinquency. The child must also, under this chapter, be found by the court:

- To have persistently run away from the child's parents or legal custodians despite reasonable efforts of the child, the parents or legal custodians, and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts shall include voluntary participation by the child's parents or legal custodians and the child in family mediation, services, and treatment offered by DJJ or DCF;

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<sup>31</sup> s. 39.001, F.S.

<sup>32</sup> s. 39.01(15), F.S.

<sup>33</sup> s. 39.5075, F.S.

- To be habitually truant from school, while subject to compulsory school attendance, despite reasonable efforts to remedy the situation under ss. 1003.26 and 1003.27, F.S., and through voluntary participation by the child's parents or legal custodians and by the child in family mediation, services, and treatment offered by DJJ or DCF; or
- To have persistently disobeyed the reasonable and lawful demands of the child's parents or legal custodians, and to be beyond their control despite efforts by the child's parents or legal custodians and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts may include such things as good faith participation in family or individual counseling.<sup>34</sup>

### *Delinquent Child*

Current Florida law defines a “child who has been found to have committed a delinquent act” as a child who is found by a court to have committed a violation of law or to be in contempt of court, except that this does not include an act constituting contempt of court arising out of a dependency proceeding or a proceeding concerning a child or family in need of services.<sup>35</sup>

### *Current Placement Options in Florida*

***Foster Care*** – The department licenses family foster homes to be used as placements for children who have been adjudicated dependent and cannot safely remain in their own homes. These are private residences in which children are provided 24-hour care. Such homes include emergency shelter family homes and specialized foster homes for children with special needs.<sup>36</sup>

***Group Homes and Shelters*** – The department also licenses residential child-caring agencies to be used as placements for dependent children. These placements provide staffed 24-hour care and include, but are not limited to, maternity homes, runaway shelters, group homes that are administered by an agency, emergency shelters that are not in private residences, and wilderness camps. Residential child-caring agencies do not include facilities operated by a governmental agency for the training, treatment, or secure care of delinquent youth.<sup>37</sup>

***State Inpatient Psychiatric Placement (SIPP)*** – SIPP services are provided to children under 18 years of age in an intensive residential setting and include: crisis intervention; bio-social and or psychiatric evaluation; close monitoring by staff; medication management; individual, family, and group therapy; and connection to community based services. These services are expected to be relatively short termed (less than six-months). Children must have a Diagnostic and Statistical Manual of Mental Disorders-IV (DSM-IV) diagnosis other than substance abuse, developmental disability, or autism. The youth must be expected to benefit from residential treatment and a less restrictive setting is not available.<sup>38</sup>

<sup>34</sup> ss. 984.03(9) and 985.03(7), F.S.

<sup>35</sup> ss. 984.03(11) and 985.03(8), F.S.

<sup>36</sup> s. 409.175(2)(e), F.S.

<sup>37</sup> s. 409.175(2)(j), F.S.

<sup>38</sup> Advocacy Center for Persons with Disabilities, Florida's Youth Inpatient Psychiatric Program. Retrieved December 3, 2011, from

[http://advocacycenter.org/resources/disability\\_topic\\_info/category/floridas\\_youth\\_inpatient\\_psychiatric\\_program/](http://advocacycenter.org/resources/disability_topic_info/category/floridas_youth_inpatient_psychiatric_program/). Florida currently has 15 SIPP programs.



***Children In Need of Services /Families in Need of Services (CINS/FINS)*** -CINS/FINS services are available for children and families for which services are needed but are not part of the formal delinquency or dependency systems. Currently DJJ has contracts for 28 youth shelters statewide. These shelter services are intended to be short-term, are primarily voluntary and include meeting the basic needs of the child and providing services, such as case management, and counseling. The purpose and function of the shelter is to provide respite from volatile family situations, to offer a safe place for children on the street and to work with the family for the child's safe return and improve family relationships. As a result of CINS petitions, the court may order the child to a longer stay in shelter-up to 120 days. There are 10 longer stay placements available statewide, one bed in each of 10 shelters, that have an additional youth care worker who provides one-to-one assistance and focus on the child's case plan. More intensive case management and counseling also occurs. These 10 placements are staff secure placements.<sup>39,40</sup> Children who have been adjudicated dependent are not eligible for CINS/FINS services, therefore children in foster care would not be eligible for these services.<sup>41</sup>

***Physically Secure Placements*** - These placements are provided through independent rate agreements with adolescent/child mental health treatment facilities. However, in recent years, funding to this service has been dramatically reduced, resulting in fewer than 10 children served per year, with no room currently to house additional children. **In Florida, dependent children cannot be sheltered within a physically secure settings either long or short term.**<sup>42</sup>

***Criminal Justice Placement Options*** – The Department of Juvenile Justice maintains detention centers which are facilities used for the placement of children pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention center or facility may provide secure or nonsecure custody.<sup>43</sup> Facilities are also available for the commitment of adjudicated delinquents and range from low-risk to maximum risk residential placements.<sup>44</sup>

## **Other States**

### ***Community-based initiatives***

#### ***The Prosecution Model***

Las Vegas, Nevada has one of the highest rates of teen prostitution in the U.S.,<sup>45</sup> and police arrest and detain hundreds of children on prostitution charges each year. In Las Vegas, arrest and detention are the primary means for linking prostituted girls to services and getting their pimps

<sup>39</sup> ss. 984.225 and 984.226, F.S.

<sup>40</sup> Department of Children and Families Staff Analysis and Economic Impact, SB 202. September 15, 2011.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> s. 985.03(19), F.S.

<sup>44</sup> s. 985.03(45), F.S.

<sup>45</sup> Las Vegas Review-Journal. *Juvenile Prostitution: Trafficking in children on increase; Las Vegas among 14 U.S. cities where problem is most severe.* March 19, 2006. Retrieved December 3, 2011, from [http://www.reviewjournal.com/lvrj\\_home/2006/Mar-19-Sun-2006/news/6434154.html](http://www.reviewjournal.com/lvrj_home/2006/Mar-19-Sun-2006/news/6434154.html).

off the streets.<sup>46</sup> While prostitution is a misdemeanor in Nevada<sup>47</sup> and youths picked up for misdemeanors are not usually held in detention, juvenile justice officials believe that the practice of detaining child prostitutes is necessary to protect the girls from the dangers of the streets and to obtain information that will lead to the arrest of their pimps.<sup>48</sup>

In 1994, in collaboration with both governmental and nonprofit social service organizations, the Las Vegas Metropolitan Police Department started a program known as S.T.O.P. (Stop Turning Out Child Prostitutes) for the purposes of identifying, locating, arresting and prosecuting any individual responsible for pandering a child and to remove the child victim from the life of prostitution and provide them with an avenue to a successful life.<sup>49</sup>

- In Las Vegas, children involved in prostitution are picked up by police and charged with prostitution or status offenses. A special unit of vice officers who work for the S.T.O.P. program interview every child who is suspected of being involved in prostitution within a half-hour of the time the child is booked into detention to assess whether the child is a victim of commercial sexual exploitation. Vice officers have long had an agreement with the detention center to automatically detain juveniles arrested for prostitution on a “vice hold.”
- If a child is willing to leave the streets and cooperate in the prosecution of her pimp, the charge of prostitution is usually dropped and she is released from detention to a specialized program for victims of commercial sexual exploitation, such as Children of the Night<sup>50</sup> located in California.

<sup>46</sup> The Barton Child Law and Policy Clinic. Emory University School of Law, *Commercial Exploitation of Children in Georgia: Service delivery and legislative recommendations for state and local policy makers*. January 2008. Retrieved December 3, 2011, from [http://bartoncenter.net/uploads/fall2011updates/status\\_other/CSEC-recs-for-policy-makers.pdf](http://bartoncenter.net/uploads/fall2011updates/status_other/CSEC-recs-for-policy-makers.pdf).

<sup>47</sup> Nev. Rev Stat. s.201.354 (2009).

<sup>48</sup> The Barton Child Law and Policy Clinic. Emory University School of Law, *Commercial Exploitation of Children in Georgia: Service delivery and legislative recommendations for state and local policy makers*. January 2008. Retrieved December 3, 2011, from [http://bartoncenter.net/uploads/fall2011updates/status\\_other/CSEC-recs-for-policy-makers.pdf](http://bartoncenter.net/uploads/fall2011updates/status_other/CSEC-recs-for-policy-makers.pdf).

<sup>49</sup> *Id.* It is unclear whether this program is still in existence.

<sup>50</sup> Children of the Night (COTN) is the oldest and appears to be one of the most influential treatment programs in the nation that works with children who are victims of prostitution. It is a private, non-profit program for children between the ages of 11 and 17 that receives referrals from governmental and non-governmental agencies across the country and only accepts those children whom it believes are willing to leave prostitution and participate in long-term, comprehensive treatment. COTN provides services that help children testify in cases against their pimps, as well as services that help them recover from commercial sexual exploitation. COTN’s treatment services are extensive and the secure residence is a comfortable, homelike environment with 24 beds. Upon arrival, children receive fresh clothing and hygiene kits and are assigned to a bedroom with bath. They meet with a caseworker to develop an individual life plan. The caseworker coordinates medical care, psychological care, academic assessments and other social services that the child needs. The children follow a highly structured program that includes attending an on-site school, where they study individually-tailored curricula that help them reach appropriate grade levels in all subjects before they leave COTN. They attend independent living classes, 12-step substance abuse meetings, and AIDS education classes, as well as craft and poetry workshops, yoga classes and varied sporting and recreational activities.

Because COTN is a purely voluntary, private program, a child may stay at the home for as long as she needs. Many opt to stay for a year for optimum treatment. Once she turns eighteen, the youth can receive assistance in leasing apartments, getting into college or trade school, or securing jobs. All those who leave COTN are considered “alumni” and can re-contact the group for services, such as free books and school supplies while they are in college, job recommendations, or crisis intervention. Children of the Night has existed since its inception through the sole support of private contributions from individuals, corporations, and foundations and runs on an annual budget of \$2 M. Retrieved December 3, 2011, from <http://www.childrenofthenight.org/index.html>.

### *Pros and Cons of the Prosecution Model*

Proponents of the prosecution model argue that, while it is not ideal to prosecute young girls who have been victimized by pimps, the ability to prosecute the girls is an essential tool in the fight against child prostitution. First, they believe arrest and detention is necessary to force prostituted children off the streets and link them to services. Second, they believe that the threat of prosecution, coupled with arrest and detention, is the only way to get most girls to cooperate in investigations of the pimps.<sup>51</sup>

Opponents believe that detention sends the message that the girls are criminals deserving of punishment, rather than victims of sexual exploitation in need of help, and that the increase in the use of detention for girls over the past decade has magnified longstanding problems within detention systems:<sup>52</sup>

The underlying assumptions of the prosecution model—that detention is helpful in keeping girls safe, providing services, and prosecuting pimps—remain unproven. While advocates of the prosecution model argue that detention increases the likelihood that girls will leave the streets and accept long-term treatment, independent, objective verification of this claim is needed. Additional research is also needed to determine whether girls are truly more likely to cooperate in the prosecution of their pimps when they are criminally charged than when they are not. Finally, by focusing on prostituted children who are arrested and detained, the prosecution model may allow children outside the juvenile justice system to fall through the cracks. At-risk children, as well as children who are already involved in prostitution, but have escaped arrest, may not receive the services they need. Youth-serving agencies that have contact with these children may be reluctant to identify them out of fear of subjecting the children to prosecution. Thus, even though the prosecution model allows authorities to force children off the streets who would not leave otherwise, a lack of inter-agency collaboration might actually result in fewer, rather than more, children being served.<sup>53</sup>

### *The Child Abuse Model*

In Boston, Massachusetts, children involved in prostitution are now being treated as victims of child abuse, rather than as perpetrators of a crime. Although prostitution by a child is still a crime in Massachusetts,<sup>54</sup> instead of pursuing prosecutions of these children, the District Attorney's

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<sup>51</sup> The Barton Child Law and Policy Clinic. Emory University School of Law, *Commercial Exploitation of Children in Georgia: Service delivery and legislative recommendations for state and local policy makers*. January 2008. Retrieved December 3, 2011, from [http://bartoncenter.net/uploads/fall2011updates/status\\_other/CSEC-recs-for-policy-makers.pdf](http://bartoncenter.net/uploads/fall2011updates/status_other/CSEC-recs-for-policy-makers.pdf).

<sup>52</sup> Francine T. Sherman, Annie E. Casey Foundation, *Detention Reform and Girls, 13 Pathways To Juvenile Detention Reform*, p. 10 (2005). Retrieved December 3, 2011, from [http://www.aecf.org/upload/publicationfiles/jdai\\_pathways\\_girls.pdf](http://www.aecf.org/upload/publicationfiles/jdai_pathways_girls.pdf).

<sup>53</sup> The Barton Child Law and Policy Clinic. Emory University School of Law, *Commercial Exploitation of Children in Georgia: Service delivery and legislative recommendations for state and local policy makers*. January 2008. Retrieved December 3, 2011, from [http://bartoncenter.net/uploads/fall2011updates/status\\_other/CSEC-recs-for-policy-makers.pdf](http://bartoncenter.net/uploads/fall2011updates/status_other/CSEC-recs-for-policy-makers.pdf).

<sup>54</sup> Mass. Gen. Laws ch 272, s. 53A (2007).

Office is now working with more than 30 community-based and government agencies, including the state's child protective agency, juvenile justice services, law enforcement, health care providers and interested non-profit groups to create a model for dealing with prostituted children based on the model used for child abuse victims.<sup>55</sup>

In early 2000, the District Attorney's Office began to take steps toward providing better services to all victims of abuse, including child victims of prostitution, and better prosecution of their abusers. In 2001, it created the Teen Prostitution Prevention Project (TPPP) to foster collaboration among the key players involved in serving prostituted children in Suffolk County and "achieve prevention, intervention and prosecution of [adult] offenders." Drawing on a multidisciplinary model that has been successful in helping other victims of child abuse, the TPPP recognizes that collaboration between agencies is the key to successfully diverting prostituted youth away from those who would exploit them.<sup>56</sup>

A memorandum of understanding signed by various Massachusetts from all branches of government and social service calls for the rapid referral of teen exploitation to the Department of Social Services - and subsequently to the district attorney's office - akin to the procedure for suspected neglect or abuse of a child. It also calls for treatment and services for the victim that are specifically intended to secure the victim's physical and emotional well-being.

As a result, when prosecutors receive a child prostitution case, they treat the child as a victim/witness rather than as a defendant. Prosecutors work as part of a multidisciplinary team to provide services to the child and, if the child is willing, to build a case against her pimp. Because they work from a child abuse model, they do not use threats of criminal charges to pressure the child to cooperate in the prosecution of her pimp or withhold services until she does.<sup>57</sup>

### *Pros and Cons of the Child Abuse Model*

One benefit that is already apparent in Boston is better identification of children involved in prostitution. By agreeing to treat prostituted children as victims rather than defendants, the District Attorney's Office appears to have strengthened its relationship with child welfare agencies. In 2007, it was reported that this new collaboration has led to a dramatic increase in the number of child abuse cases involving prostituted teens. Before the collaborative initiative

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<sup>55</sup> The Barton Child Law and Policy Clinic. Emory University School of Law, *Commercial Exploitation of Children in Georgia: Service delivery and legislative recommendations for state and local policy makers*. January 2008. Retrieved December 3, 2011, from [http://bartoncenter.net/uploads/fall2011updates/status\\_other/CSEC-recs-for-policy-makers.pdf](http://bartoncenter.net/uploads/fall2011updates/status_other/CSEC-recs-for-policy-makers.pdf).

<sup>56</sup> Suffolk County District Attorney's Office. *Teen Prostitution Prevention Project Named Among Top 50 Innovative Government Programs*. April 4, 2007. Retrieved December 3, 2011, from <http://www.mass.gov/dasuffolk/docs/4.4.07C.html>.

<sup>57</sup> In Boston, it is the filing of a mandatory child abuse reports that is the gateway to services for children victimized by commercial sexual exploitation. Like Florida, Massachusetts requires the reporting of suspected child abuse. Until recently, however, mandatory reporters were not filing reports when they suspected that a child was being prostituted. One of TPPP's ongoing initiatives has been to educate mandated reporters that prostitution creates "physical or emotional injury...which causes harm or substantial risk of harm to the child's health or welfare..." and thus is child abuse. See Mass. Gen. Laws ch. 119, s. 51A.

began, the state social services agency would rarely send cases to the district attorney because they were worried the girls would be prosecuted.<sup>58</sup>

One challenge of the child abuse model is that it can only serve children who want help. For the child abuse model to work, therefore, it requires strong education and outreach efforts, and a staff-secured safe house and treatment facility.<sup>59</sup> Because children involved in prostitution are not brought to services through arrest, they must be brought to services through education and outreach. The process of removing the pimp's psychological hold on the child must take place on the streets, rather than in a holding cell.<sup>60</sup>

Another concern with the child abuse model is that it may hinder the prosecution of pimps. Some argue that the threat of being prosecuted for prostitution is the only thing that will motivate many children to testify against their pimps. However, because the Boston model is so new, it may be too soon to know whether treating child prostitutes as victims rather than as offenders really results in fewer successful prosecutions of pimps.<sup>61</sup>

### *The Hybrid Model*

San Francisco, like Las Vegas, uses arrest and detention as a way to remove prostituted children from the dangers of the street, link them to services, and build a case against their abusers. San Francisco differs, however, in that authorities have contracted with specialized community-based organizations to assess and counsel children who have been involved in prostitution while they are still in custody and upon their release. Because San Francisco relies on arrest and detention to bring children into the system, and couples that practice with a wide range of victim-centered services, it is referred to as a hybrid model.<sup>62</sup>

In the past, children who live in San Francisco and were arrested on prostitution charges were only detained if they had committed other crimes or violated their probation. In 2003, when a young victim of prostitution was murdered on the street after being released by police, authorities instituted a new protocol. Today, all children arrested on prostitution are detained "for their own safety."

Authorities use a procedure of "informal probation" by which they drop the charges against the child in exchange for the child's agreement to be held for up to 90 days and enter into probation. As part of her probation, the child must participate in gender-specific services provided by programs while in custody and after release that, according to the probation department, are "designed both to hold girls accountable for their actions but also to help them heal." One such program is offered by an organization known as Standing Against Global Exploitation (SAGE), a

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<sup>58</sup> The Barton Child Law and Policy Clinic. Emory University School of Law, *Commercial Exploitation of Children in Georgia: Service delivery and legislative recommendations for state and local policy makers*. Retrieved December 3, 2011, from [http://bartoncenter.net/uploads/fall2011updates/status\\_other/CSEC-recs-for-policy-makers.pdf](http://bartoncenter.net/uploads/fall2011updates/status_other/CSEC-recs-for-policy-makers.pdf).

<sup>59</sup> *Id.* In keeping with the child abuse model, Boston's residential treatment facility will not be locked, but located far from the city with electronically monitored entrances and exits and round-the-clock staff who can discourage the children from leaving when the urge to run strikes.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

non-profit group founded by a prostitution survivor, staffed by prostitution survivors, and dedicated to serving victims of commercial sexual exploitation.<sup>63</sup>

In contrast to the Las Vegas detention model, this more victim-centered or “survivor-focused” model in San Francisco relies on peer counselors who are former prostitutes, rather than vice officers, to assess and counsel the girls while they are detained.<sup>64</sup> Children who are victims of commercial sexual exploitation continue to work with SAGE upon their release.

### *The Benefits and Drawbacks of the Hybrid Model*

San Francisco’s hybrid model has many of the same drawbacks as the detention model used in Las Vegas. As mentioned earlier, detention of children who have been used by adults in the sex trade punishes the victim. The San Francisco model mitigates this problem by inserting a strong therapeutic element into the detention facility. The addition of these wraparound services may make San Francisco’s “hybrid” model better-suited to meeting the needs of child victims of prostitution than Las Vegas’ prosecution model.<sup>65</sup>

The San Francisco model, however, still struggles with the same problem faced in Boston through the use of the child abuse model: that of identifying child victims of prostitution who are not brought to attention through arrest.<sup>66</sup>

### *Legislative initiatives*

Very few states<sup>67</sup> have enacted legislation relating to the sexual exploitation of children. However, New York has in recent years adopted two specific pieces of legislation designed to better protect and serve children who are victims of sexual exploitation:

- In June 2007, the New York State Legislature made many changes to New York law relevant to the commercial sexual exploitation of children, including defining the crime of sex trafficking without regard to the age of the victim; requiring anyone convicted of sex trafficking or attempting sex trafficking to register as a sex offender; requiring notification of social services for assessment if the victim is under the age of 18; and

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<sup>63</sup> SAGE website. Retrieved December 3, 2011, from <http://www.sagesf.org/>.

<sup>64</sup> In addition to its in-custody program, SAGE offers a number of other programs for prostituted youth, including an intensive case management program. Each girl works with a case manager to develop an individualized service plan with measurable objectives. The girls work with peer counselors in individual and group sessions, addressing such issues as sexual exploitation, relationships, neighborhood safety, substance abuse, anger management, vocational preparation, and communication. GED and computer training is available. Most girls participate in the program for between 6 and 14 months. SAGE also offers medical screening, vocational rehabilitation, a transgender program, and an arts collective and creative writing program. In 2005, SAGE opened a six-bed safe house to provide prostituted girls, ages 12 through 17, with a “safe, nurturing environment that specializes in trauma recovery.” SAGE accepts referrals from juvenile probation, as well as from the child protective services’ shelter, family courts, defense attorneys and others. Girls must be “interested in escaping prostitution.”

<sup>65</sup> The Barton Child Law and Policy Clinic. Emory University School of Law, *Commercial Exploitation of Children in Georgia: Service delivery and legislative recommendations for state and local policy makers*. Retrieved December 3, 2011, from [http://bartoncenter.net/uploads/fall2011updates/status\\_other/CSEC-recs-for-policy-makers.pdf](http://bartoncenter.net/uploads/fall2011updates/status_other/CSEC-recs-for-policy-makers.pdf).

<sup>66</sup> *Id.*

<sup>67</sup> Illinois and California have enacted legislation related to the protection of children who are victims of sexual exploitation.

making victims of sex trafficking eligible for victim compensation funds. The legislation also created an interagency task force on human trafficking.<sup>68</sup>

- In June 2008, the New York Legislature enacted what is known as the Safe Harbor Act. The Safe Harbor Act would allow for the presumption that a person under 16 years of age, who is charged as a juvenile delinquent for a prostitution offense, is a severely trafficked person. This presumption permits the child to avoid criminal charges of prostitution and instead be considered a “person in need of supervision.” The statute also provides support and services to sexually exploited youth who are under the age of 18. These services include safe houses, crisis intervention programs, community-based programs, and law-enforcement training to help officers identify sexually exploited youth.<sup>69</sup>

While child advocates have praised New York’s Safe Harbor Act for its recognition of the specialized service needs of commercially sexually exploited children, critics allege that the statute is too narrowly drawn and will not cover all child victims of sexual exploitation, and that the commercial sexual exploitation of children has not been destigmatized by removing it from the definition of prostitution altogether. Also, while allowing courts to classify these children as persons in need of supervision rather than as delinquents, they can still be arrested and suffer the ill-effects of secure detention before that change in status is made.<sup>70</sup> Although the Safe Harbor legislation was enacted in June 2008, the April 1, 2010 effective date means it is too early to tell how effective it will be.<sup>71</sup>

### III. 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.

**Legislative findings, intent, and establishment of goals for sexually exploited children** – The bill provides that it is the intent of the legislature that children who are victims of sexual exploitation should be cared for through the dependency system rather than the delinquency system and that the state shall provide dependency services to all children not receiving comparable services under the federal Trafficking Victims Protection Act. While the language is not substantive, lines 69-74 of the bill state:

Although minors are by law unable to consent to sexual activity, they are most often treated as perpetrators of crime rather than victims. Moreover, the historical treatment of such children as delinquents has too often resulted in the failure to successfully prosecute the trafficker, who is the true wrongdoer and threat to society.

<sup>68</sup> The Barton Child Law and Policy Clinic. Emory University School of Law, *Commercial Exploitation of Children in Georgia: Service delivery and legislative recommendations for state and local policy makers*. January 2008. Retrieved December 3, 2011, from [http://bartoncenter.net/uploads/fall2011updates/status\\_other/CSEC-recs-for-policy-makers.pdf](http://bartoncenter.net/uploads/fall2011updates/status_other/CSEC-recs-for-policy-makers.pdf).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

The Florida Department of Law Enforcement (FDLE) reported there should be a point of clarification with respect to the treatment of children engaged in sexual activity and deemed delinquent. A recent review of Computerized Criminal History (CCH) data for 2007, 2008, 2009 and 2010 reflects very few arrest events involving offenders under 16 with respect to any unlawful acts under 796.07(2). The data reflected a total of 26 arrest events for 2007, 12 arrest events for 2008, 26 arrest events for 2009 and 19 arrest events for 2010 for this demographic. This represents less than one percent, approximately 0.5%, of total arrest events (all ages) under this statute for 2007; 0.2% for 2008; 0.6% for 2009; and 0.5% for 2010.<sup>72</sup>

These statistics are merely arrest events. Actual prosecutions of minors under s. 796.07, F.S., are most likely significantly lower. While improvement in the handling of such children may be warranted, it is doubtful that the failure to successfully prosecute traffickers is a result of the treatment of these children as delinquents. Traffickers can be prosecuted under the sexual battery statute and/or the prostitution statute as currently written.<sup>73</sup>

In addition, FDLE reported that:

- Many law enforcement officers who deal with prostitution issues indicate informal alternatives uniquely available in their communities may already be dealing with many of the concerns of this bill, but in a manner that does not generate hard data. If there is no arrest, but simply a referral into a community service entity, there may be little or no data in state databases reflecting this action; and
- Nationally, there are those who suggest that keeping minors engaged in prostitution in the criminal/delinquency system promotes more success in rehabilitative efforts, in that there remains a significant sanction if the minor chooses not to seriously avail herself/himself of the rehabilitative option. This could suggest that implementing a statewide policy change to remove all under the age of 16 from the criminal/delinquency option might not be the best way of assuring rehabilitative success. Indeed, some of the successful programs retain the “criminal sanction” as the best means of monitoring whether the minor, introduced into a program, successfully completes it.<sup>74</sup>

Lines 79-80 of the bill state that it is a goal of the legislature to provide for the treatment of sexually exploited children as dependent children rather than as delinquents. The prostitution of children occurs in a variety of contexts, including parents advertising and prostituting their children over the Internet, runaway and homeless children on city streets being recruited by pimps or engaging in “survival sex,” and drug pushers forcing addicted teenagers to prostitute themselves as a condition for receiving drugs or a place to stay. But also, acting on their own initiative or in the company of friends, young people may engage in casual or even frequent prostitution for money or for adventure.<sup>75</sup> Children in the latter category may need intervention and services, but not as dependent children.

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<sup>72</sup> Florida Department of Law Enforcement. Analysis for HB 99, Revised December 2, 2011. SB 202 is identical to HB 99.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Finkelhor, D. and Ormrod, R. *Delinquency Prevention. Prostitution of Juveniles: Patterns From NIBRS*, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. June 2004. Retrieved December 2, 2011, from <http://www.ncjrs.gov/pdffiles1/ojjdp/203946.pdf>. Also see Rasmusson, A. (1999). Commercial



**Definitions** – The bill amends a number of definitions in chapter 39, F.S.:

- The term “child who is found to be dependent” is amended to include 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 be to place children meeting those criteria within the dependency system.
- The term “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.

FDLE reported concerns relating to removing the “third party” requirement for exploitation:

New language adding "the act of a child offering to engage in or engaging in prostitution; or" at lines 217-219 should be removed to retain current law's requirements that sexual exploitation of a child includes "allowing, encouraging, or forcing" of the child to engage in the behavior – that there is the involvement of another in causing the child to engage in prostitution behavior. The proposed change assumes every minor engaged in sexual conduct is doing it as a result of exploitation and as noted earlier, there is no consensus of opinion among Florida law enforcement that this is always the case. Including "the act of a child offering to engage in or engaging in prostitution" with no restrictions, modifications or limitations removes discretion from law enforcement to treat each case individually and brings all prostitution activity by a child into the "protected status" for sexual exploitation.<sup>76</sup>

Children are adjudicated dependent as a result of action or inaction on the part of a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in ch. 39, F.S. Including "the act of a child offering to engage in or engaging in prostitution" in the definition of “sexual abuse of a child” removes a caregiver as perpetrator and in so doing creates an inconsistency in the Florida dependency system.

**Delivery to a short-term safe house** – The bill requires a law enforcement officer who takes a child alleged to be dependent into custody to deliver a child for whom there is probable cause to believe he or she has been sexually exploited to a short-term safe house if one is available. The Department of Juvenile Justice (DJJ) reported that this appears to eliminate the option of handling any child as a delinquency referral when the child has a previous delinquency history.<sup>77</sup>

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Sexual Exploitation of Children: A Literature Review. Minneapolis, MN: The Alliance for Speaking Truths on Prostitution and The Center for Urban and Regional Affairs. Retrieved December 3, 2011, from <http://www.adultssavingkids.org/LitRev.html>.

<sup>76</sup> Florida Department of Law Enforcement. Analysis for HB 99, August 19, 2011. SB 202 is identical to HB 99.

<sup>77</sup> Department of Juvenile Justice, 2012 Legislative Session Bill Analysis, SB 202. October 24, 2011.

**Shelter placement** – The bill creates a rebuttable presumption that placement of a sexually exploited child in a short-term safe house is necessary. 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 the most appropriate placement. The bill also adds the fact that a child has been sexually exploited to the list of conditions which show reasonable efforts by DCF to prevent or eliminate the need for removal of the child from the home. (Similar changes are made to provisions relating to disposition hearings).

The change related to reasonable efforts would appear to mean that a sexually exploited child would be placed in shelter regardless of any additional circumstances in his or her home.

**Safe-harbor placement** – The bill creates a new section of law 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 such placement is determined to be appropriate, the child shall be so placed, if a safe house is available. A definition for the term “available” is provided. The section also provides for:

- Criteria to be included in the initial assessment for placement;
- Information relating to the placement to be included in each judicial review;
- Special permanency teams to be established to work with these children;
- Specific data to be maintained related to referrals for safe house placement; and
- An annual report to the legislature related to placement of sexually exploited children;

**Safe harbor for sexually exploited children** – The bill also creates a new section of law relating to safe harbor for children who are victims of sexual exploitation. Specifically, the section:

- Creates a definition for “child advocate” to mean an employee of a short term safe house who has been trained to work with and advocate for sexually exploited children;
- Creates definitions for the terms “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” differs from a “short-term safe house” in that the former 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.
- Creates a definition for the term “sexually exploited child” to mean a dependent child who has suffered sexual abuse and who is ineligible for services under the federal Trafficking Victims Protection Act;
- Creates a definition for the term “secure” to mean that a child is supervised 24 hours a day by staff members who are awake while on duty;
- Requires every circuit of the department to address the child welfare service needs of sexually exploited children as a component of the circuit’s master plan. This determination shall be made in consultation with local law enforcement, runaway and homeless youth program providers, local probation departments, local community-based care and social services, local guardians ad litem, public defenders, state attorney’s

- offices, and child advocates and services providers who work directly with sexually exploited youth;
- Requires the lead agency, not-for-profit agency, or local government entity that is providing safe-house services to be responsible for security, crisis intervention services, general counseling and victim-witness counseling, a comprehensive assessment, residential care, transportation, access to behavioral health services, recreational activities, food, clothing, supplies, infant care, and miscellaneous expenses associated with caring for these children; for necessary arrangement for or provision of educational services, including life skills services and planning services to successfully transition residents back to the community; and for ensuring necessary and appropriate health and dental care;
  - Does not prohibit the safe house provider from billing Medicaid for services rendered, from contracting with local school districts for services, or from obtaining funding from additional sources;
  - Provides that the lead agency, not-for-profit agency, or local government entity providing safe-house services has the legal authority for children served in a safe-house program, as provided in chapter 39 or this chapter, as appropriate, to enroll the child in school, to sign for a driver's license for the child, to cosign loans and insurance for the child, to sign for medical treatment of the child, and to authorize other such activities;
  - Requires that all of the services created under this section may, to the extent possible provided by law, be available to all sexually exploited children whether they are accessed voluntarily, as a condition of probation, through a diversion program, through a proceeding under chapter 39, or through a referral from a local community-based care or social service agency; and
  - Provides that the local circuit administrator **may**, to the extent that funds are available, in conjunction with local law enforcement officials, contract with an appropriate not-for-profit agency having experience working with sexually exploited children to train law enforcement officials who are likely to encounter sexually exploited children in the course of their law enforcement duties on the provisions of this section and how to identify and obtain appropriate services for sexually exploited children.

The creation of the definition for the term “secure” to mean that a child is supervised 24 hours a day by staff members who are awake while on duty is problematic.

24 hour-awake staff is not currently part of the department's operations for children unless they are housed due to mental health or substance abuse issues.

**In addition, children who are adjudicated dependent cannot be sheltered within a physically secure setting either long or short term in Florida.**<sup>78</sup>

In addition, a recent Florida District Court of Appeal opinion held that a dependent child cannot be placed in secure detention for his or her own best interest. This ruling would suggest that safe house placement would not be an option for these children.<sup>79</sup>

<sup>78</sup> Department of Children and Families. Staff Analysis and Economic Impact. SB 202. September 15, 2011.

<sup>79</sup> *J.J. v. State of Florida*. 2010 WL 1222667 (Fla.App. 3 Dist.).

The permissive language relating to law enforcement training is problematic. It is generally agreed upon that one of the most important facets of efforts to successfully work with children who are victims of sexual exploitation is adequate training of all disciplines involved:

Lois Lee, founder and president of Children of the Night, endorses the Las Vegas prosecution model and works closely with Las Vegas police and juvenile probation. However, while she believes detention is an appropriate way to get children off the streets and improve prosecution of pimps, she notes that the **model only works if the police are specially trained**, honest and compassionate—as she believes is the case in Las Vegas—and the charge of prostitution is eventually dropped, and the child linked to services. In her words, COTN is the “carrot” and law enforcement is the “stick” that leads to the arrest of “vile pimps that force the children to prostitution for food and a place to sleep.”<sup>80</sup>

A model state law drafted by the Freedom Network<sup>81</sup> includes the following provision: **Training** shall be made available in all relevant local and state agencies, including, but not limited to, healthcare, hospital, law enforcement, labor, agriculture, housing, and social service, to educate officials on:

- The phenomenon of human trafficking, state and federal laws on human trafficking, the rights and needs of trafficked persons, and the tools necessary to provide effective services to trafficked persons;
- How to recognize and identify trafficking victims;
- Methods for protecting trafficking victims and advising them of their rights; and
- Procedures and techniques for handling specialized needs of victims who may face cultural, language and other barriers that impede ability to request and obtain available services.<sup>82</sup>

**Prohibitions related to prostitution** – The bill amends provisions relating to prostitution making certain acts related to prostitution unlawful only if committed by any person 16 years of age or older. The intent behind “16 years of age” is unclear.

Additionally, the amendment to s. 796.07(3) raises concerns. This provision makes certain acts related to prostitution unlawful only if committed by any person 16 years of age or older. This could potentially impact criminal statutes beyond prostitution by promoting arguments that a

<sup>80</sup> The Barton Child Law and Policy Clinic. Emory University School of Law, *Commercial Exploitation of Children in Georgia: Service delivery and legislative recommendations for state and local policy makers*. January 2008. Retrieved December 3, 2011, from [http://bartoncenter.net/uploads/fall2011updates/status\\_other/CSEC-recs-for-policy-makers.pdf](http://bartoncenter.net/uploads/fall2011updates/status_other/CSEC-recs-for-policy-makers.pdf).

<sup>81</sup> The Freedom Network USA established in 2001 is a coalition of 25 non-governmental organizations that provide services to, and advocate for the rights of, trafficking survivors in the United States. Their mission is to ensure that trafficked persons are treated as victims and not criminals, are able to have full access to justice, including the right to full compensation and restitution from the traffickers, and are provided with access to linguistically-appropriate and culturally-sensitive, victim-centered social, mental health, medical, legal, educational, vocational and other services and to increase public awareness of the crime of trafficking through education, research, **training** and community outreach and organizing for the purpose of preventing trafficking and supporting the rights of trafficked persons.

<sup>82</sup> State Model Law on Protection for Victims of Human Trafficking. Retrieved December 3, 2011, from <http://www.urbanjustice.org/pdf/publications/FNStateModelLaw.pdf>.

person under 16 is likewise “exploited” when he commits other crimes and should not be treated as a delinquent.<sup>83</sup>

**Civil penalties** – The bill increases the civil penalty for violations related to prostitution from \$500 to \$5,000 with \$500 of the proceeds to be paid to the court and the remaining \$4,500 to be paid to DCF for the sole purpose of funding safe houses and short-term safe houses. FDLE believes the proposed funding may in fact be “phantom funding.” The bill proposes to fund the “safe harbor” approach by increasing the civil penalty from \$500 to \$5000 and diverting \$4500 to fund “safe harbor” when one is guilty of solicitation of prostitution or when one has a weapon during the commission of a prostitution related offense.

It has been reported to FDLE that the experience statewide is that the current \$500 is rarely successfully collected. If this is true, then increasing the penalty ten-fold will likely not make the rate of collection higher, and in reality the anticipated funds to fund the “safe harbor” approach may be illusory. An analysis of current collection rates of the \$500 penalty should be completed before assuming extra funds will be raised by the proposed ten-fold increase in the penalty.<sup>84</sup>

### **Eligibility for Award under Victims Assistance Program**

The bill allows victims of sexual exploitation to be eligible for compensation (awards), regardless of whether or not the child is willfully engaging in prostitution. The Victims Assistance<sup>85</sup> program is overseen by the Attorney General’s office and provides financial assistance for medical care, lost income, mental health services, funeral expenses and other out-of-pocket expenses directly related to the injury, to persons who are eligible.

**Juvenile delinquency** – The bill 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.

## **IV. Constitutional Issues:**

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

None.

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

None.

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

None.

<sup>83</sup> Florida Department of Law Enforcement. Analysis for HB 99, August 19, 2011. SB 202 is identical to HB 99.

<sup>84</sup> *Id.*

<sup>85</sup> State of Florida. Office of the Attorney General. Retrieved December 2, 2011 from <http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument>.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

- FDLE reports there will be minimal fiscal impact on the agency.
- The Department of Juvenile Justice (DJJ) reports no fiscal impact on the agency.
- DCF reports that it is unable to determine an estimated fiscal impact due to the lack of specificity in the bill.

While the proposed legislation is very specific in stating that implementation is contingent upon available funding, initial acquisition, construction, and start-up costs for a standard 15-20 bed specialized sexual exploitation facility has proven to be approximately \$1,500,000-\$2,000,000 (see Las Vegas, NV, and Oakland, CA). The department does have experience in procuring highly specialized residential placement. As such the department estimates that the daily operating cost minus the initial acquisition, construction, and start-up costs for a sexual exploitation bed is estimated to be somewhere around \$350.00 per day per child. Approximately \$180.00 of the estimated \$350.00 daily cost could be covered through Medicare reimbursement for intensive mental health therapy in a therapeutic group home setting. However, this assumes that all of these children will have an assessed mental health diagnosis that requires placement into a therapeutic group home setting.

In short, there is the potential for a minimum estimated \$170.00 dollar per day short fall in funding for these victims based on the current funding structure. If the estimate number of identified victims falls within the estimated annual 200-300 range that would mean that in approximately 2 years there is the potential for a minimum additional annual outlay of **\$12,410,000** to **\$18,615,000** in additional funds to meet the intensive service needs of this population in a highly specialized treatment environment.

Additionally, any child who spends at least 6 months living in the foster care system before reaching his or her 18th birthday is currently eligible for financial assistance

up to the age of 23 through independent living transition services.<sup>86</sup> Given that initial identification of most victims occurs when a child is between the ages of 16 -17 and that most established residential domestic minor sex trafficking programs currently operate a 12-18 month residential placement program there is a strong probability that most identified victims will become eligible for Road to Independence funding when they age out of the foster care system. If the estimated number of annual identified victims falls within the expected 200-300 within 2 years it is expected that 200-300 young adults who were a victim of Domestic Minor Sex Trafficking will have aged out of Florida foster care system and will/could be eligible to receive a maximum monthly stipend of \$1254.00 per month so long as they enrolled full time educational program and remain in good standing within that educational program. This could potentially mean that state Independent Living funding for young adults who have aged out of the foster care system might require a minimum of additional annual funds in the **\$3,000,000 to \$4,500,000** range to cover this new eligible population.

The cost associated with this bill is not anticipated to have a direct fiscal impact on the department. However, it could have an impact on community based care (CBC) lead agencies when safe houses and short-term safe houses are available. CBCs are required to serve all dependent children referred to their agency. Therefore any additional cost would have to be absorbed by current contract funds to the CBC. However, at the time of this analysis neither of these facilities are available, which render the provisions of the bill moot.

## VI. Technical Deficiencies:

There are a number of technical deficiencies and inconsistencies in the bill, including, but not limited to:

- Lines 92-99 of the bill create legislative intent for the state to provide services to **all** sexually exploited children in the state who are not otherwise receiving comparable services, such as those under the federal Trafficking Victims Protection Act. Benefits and services under the federal act are for certified trafficking victims who are non-U.S. citizens and their children who have been issued a letter by ORR declaring them victims of a severe form of trafficking. It is unclear how these children will come to the attention of law enforcement or social services and, if they do, whether they will automatically be placed in a safe house according to the provisions of the bill.
- Lines 238-241 of the bill require a law enforcement officer who takes a child for whom there is probable cause to believe he or she has been sexually exploited into custody to deliver the child to a short-term safe house if one is available. No alternative is provided for cases in which no safe house is available or the safe house is distant from the county where the child was taken into custody.
- Lines 262-264 of the bill are **permissive** relative to placement of a child awaiting the shelter hearing. This appears to be inconsistent with required placement in lines 238-241.

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<sup>86</sup> s. 409.1451, F.S.

- Lines 284-286 and 292-294 create a rebuttable presumption that if a child is alleged to have been sexually exploited, placement in a short-term safe house is necessary. This conflicts with lines 238-241 which does not reference “alleged” victimization. Also these changes occur in s. 39.407, F.S., relating to placement in a shelter, which is a time limited placement. This time frame should be the same in the newly created section relating to short-term safe houses; however there is no mention of limitation on length of stay in a short-term safe house.
- Lines 445-448 of the bill create a rebuttable presumption that a child found to be a victim of sexual exploitation be committed to a safe house. This language appears to be inappropriately placed in the middle of a paragraph dealing with court approved visitation. Use of the term “committed” when referring to placement in a safe house is inappropriate in the dependency context.
- Lines 474-489 of the bill, relating to assessment of a child who has been found to be a victim of sexual exploitation, is unclear. The child is to be assessed by the department or its agent for placement in a safe house if appropriate. If the department is performing the assessment, it would have to be done by a child protective investigator (CPI). It is unclear if this is part of a child protective investigation, although it would appear to be a different assessment that would require skills other than those typically of CPIs.
- Lines 509-521 of the bill require data collection by the department relating to safe house placements. It is unclear whether this data is to be captured in the Florida Safe Families Network (FSFN) system.
- Lines 527-532 of the bill create a definition for the term “child advocate.” Since this individual is not a party to a dependency proceeding it would be impossible for him or her to serve as a liaison with the court. It is unclear why such an advocate would be necessary in a short-term safe house and not a safe house. The responsibilities of the advocate may be duplicative of those of a guardian ad litem.
- Lines 533-547 of the bill define a safe house as living quarters for sexually exploited children who have been adjudicated dependent or **delinquent**. This appears to conflict with the goal of the bill to treat all sexually exploited children as dependent.
- Lines 538-539 of the bill require safe houses to be operated **by** a licensed family foster home or a residential child-caring agency. It is unclear whether “by” should be “as.”
- Lines 540-543 of the bill require safe houses to be licensed residential child-caring agencies and be accredited. There is currently no requirement for licensed residential child-caring agencies to be accredited, nor does the bill specify what accrediting entity must be used.
- Lines 550-553 of the bill provide a define a “sexually exploited child” as a dependent child who has suffered sexual abuse and is ineligible for benefits under the federal Trafficking Victims Protection Act. Children who are defined as sexually exploited should include children who are victims of certain acts and crimes, and not based on their eligibility for services.
- Lines 554-563 of the bill defines a short-term safe house as a shelter operated by a licensed family foster home or licensed residential child-caring agency. Foster



parents are not typically in the business of operating a shelter and providing services.

- Lines 594-601 of the bill provide authority to the entity providing safe house services to enroll the child in school, sign for a driver's license, cosign loans and insurance, sign for medical treatment and authorize other such activities. This language is not specific as to what kinds of medical treatment may be authorized without parental permission, and it is unclear why a child who is placed in a secure safe house would need a driver's license. It is also unclear what entity would assume the liability of cosigning a loan for a minor.

## VII. Related Issues:

The bill provides for a significant change in statewide policy related to minors involved in prostitution that removes a minor under the age of 16 from criminal/delinquency options and instead would treat them as victims to be addressed through the dependency court system.<sup>87</sup> A number of entities are currently examining this issue in an attempt to find the best solution for these children in Florida:

- DCF and DJJ are working on draft legislation that will not be ready for introduction until the 2013 legislative session;
- The Human Trafficking Task Force<sup>88</sup> appointed a subcommittee to deal with this policy issue as well as the approach taken by SB 718 from the 2010 session. After numerous meetings, there was no clear consensus on how this significant problem should be addressed and concerns raised over the 2010 legislation (which equally apply to 2011's SB 718 and the 2012 SB 202) were not resolved nor were recommendations for resolution made. Most serving on the group believed some sort of limited "pilot project" approach would be wise before effecting a statewide significant policy change; and
- The Legal Needs of Children Committee of the Florida Bar has formed a subcommittee on human trafficking with the goal of vetting and endorsing legislation.

FDLE has reported that there remains a significant concern in the law enforcement community about moving **all** minors under the age of 16 from the criminal/delinquency option to a dependency approach.<sup>89</sup> There are two schools of thought on this:

- Street level law enforcement officers indicate they encounter minors who deliberately choose to engage in prostitution not because they have been forced to do so or are being "exploited", but acting willingly, choosing to use sexual services as a "product" they can "sell" to gain money for personal desires and purposes; and
- Others believe that children are lured into this lifestyle by others with promises that never come to fruition, or are forced into sexual activity as the means of surviving on the streets, and that the "Johns" who hire them are the exploiters.

<sup>87</sup> Any debate of this proposal must recognize that there are few facilities statewide that could meet the demands of treating minors as proposed by this bill.

<sup>88</sup> The State Legislature created the Task Force in 2009 "to examine and analyze the problem of human trafficking and to plan for a coordinated, humane response for victims of human trafficking through a review of existing programs, a clarification of existing options for such victims, and revised policy efforts to coordinate governmental and private efforts."

<sup>89</sup> Florida Department of Law Enforcement. Analysis for HB 99, August 19, 2011. SB 202 is identical to HB 99.

Since neither view is mutually exclusive of the other, law enforcement believes having the discretion to apply a wide range of options, including delinquency or arrest, is the best approach. Discretion may also provide options to ensure that intervention occurs.<sup>90</sup>

FDLE has proposed an alternative to allow victims of human trafficking and exploitation involving minors in prostitution an option to easily obtain expunction of their prostitution arrest record. FDLE believes that allowing law enforcement to retain full discretion in how to handle each situation individually, coupled with an opportunity for those who have been exploited to expunge the criminal history record so they can begin life anew provides a good balance between the divergent attitudes and philosophies that address this issue. A pilot program would provide a Florida-based test of assumptions to see if the results warrant implementation statewide.<sup>91</sup>

### **Comments from the Office of the State Courts Administrator (OSCA)**

OSCA reported that there will be an increase in judicial or court workload. The amount of the increase and the resulting fiscal impact are indeterminate.

### **Comments from the Florida Sheriff's Association (FSA)**

While the FSA has not taken a position on the issue of sexual exploitation of children, the association has reported a number of concerns:

- The fact that the legislation creates a presumption that all minors engaging in sexual activity do so “involuntarily” does not reflect what can and does happen on the street; and
- The fact that the bill proposes a “one size fits all” solution to a complex problem. Law enforcement believes retaining the current flexibility of making a determination on a case-by-case basis is the best option.<sup>92</sup>

## **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.

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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>90</sup> *Id.* Regardless of the view taken, criminal history data indicates that youth are not being arrested in significant numbers in Florida today for prostitution related offenses. This suggests that street level law enforcement officers may already be utilizing non-arrest, non-delinquency options that might be available locally. However, there is no uniform system throughout the state and local and regional resources vary greatly. A “one size fits all” approach is unrealistic given the present status of resources throughout the state.

<sup>91</sup> Florida Department of Law Enforcement. Analysis for HB 99, August 19, 2011. SB 202 is identical to HB 99.

<sup>92</sup> Florida Sheriff's Association. Comments on HB 99. HB 99 is identical to SB 202.