

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7049 PCB JDC 12-01 Human Trafficking

SPONSOR(S): Judiciary Committee, Snyder and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1880

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee	18 Y, 0 N	Thomas	Havlicak
1) Appropriations Committee	19 Y, 0 N	Jones Darity	Leznoff

SUMMARY ANALYSIS

The bill updates and enhances Florida's human trafficking laws by:

- Combining statutes on involuntary servitude, human trafficking, and sex trafficking into a single statute.
- Enhancing the applicability of these provisions and increasing penalties.
- Providing jurisdiction for human trafficking to the Office of the Statewide Prosecutor and to the statewide grand jury.
- Providing that human trafficking for the purpose of commercial sexual activity is a predicate offense for sex offender and sex predator status.

The bill makes changes to the human trafficking statute to:

- Eliminate the requirement that human trafficking be "for transport."
- Include within the definition of "commercial sexual activity" prostitution, pornography, and sexually explicit performances.
- Increase penalties to first degree felonies.
- Eliminate the requirement that prohibited trafficking of minors for commercial sexual activity be "coerced."
- Provide an enhanced penalty to those who traffic minors.
- Provide an enhanced penalty to those who traffic persons who are not legally authorized to work in the United States.

In addition, the bill:

- Increases the penalty for the crime of human smuggling from a first degree misdemeanor to a third degree felony.
- Permits a judge to authorize the interception of wire, oral, or electronic communications when such interception may provide evidence of the commission of the offense of human trafficking.
- Requires an operator of a massage establishment, any employee of a massage establishment and any person performing massage therein to present valid government identification to an investigator of the Department of Health or law enforcement officer upon request.

The Criminal Justice Impact Conference met January 30, 2012, and found the bill will have an indeterminate impact on state prison beds. However, it is not anticipated that the bill will have a significant fiscal impact. While the bill increases penalties for human trafficking, it is not expected that the number of offenders will be high.

The bill takes effect July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Nationwide Human Trafficking

The term "human trafficking" is a phrase commonly used to describe many forms of exploitation of human beings. It is often synonymous with "modern-day slavery." Victims of human trafficking are subjected to force, fraud, or coercion, for the purpose of sexual exploitation or forced labor. Many victims of human trafficking are forced to work in prostitution or the sex entertainment industry. But trafficking also occurs in forms of labor exploitation, such as domestic servitude, restaurant work, janitorial work, sweatshop factory work and migrant agricultural work. The crime of human trafficking does not require that the victim be physically transported from one location to another.

Traffickers use various techniques to instill fear in victims and to keep them enslaved. Some traffickers keep their victims under lock and key. However, the more frequent practice is to use less obvious techniques including:

- Debt bondage - financial obligations, honor-bound to satisfy debt;
- Isolation from the public - limiting contact with outsiders and making sure that any contact is monitored or superficial in nature;
- Isolation from family members and members of their ethnic and religious community;
- Confiscation of passports, visas and/or identification documents;
- Use or threat of violence toward victims and/or families of victims;
- The threat of shaming victims by exposing circumstances to family;
- Telling victims they will be imprisoned or deported for immigration violations if they contact authorities;
- Control of the victims' money, e.g., holding their money for "safe-keeping."

Annually, between 700,000 and 2 million people are bought and sold worldwide as prostitutes, domestic workers, sex slaves, child laborers, and child soldiers.¹ After drug dealing, trafficking of humans is tied with arms dealing as the second largest criminal industry in the world, and is the fastest growing.² An estimated 15,000 – 18,000 people are trafficked annually in the United States.³

Federal Human Trafficking Law

The Trafficking Victims Protection Act (TVPA), which became law in 2000, was the first major comprehensive United States legislative effort to address human trafficking.⁴ Key provisions of the TVPA included:

- Created new laws that criminalized trafficking with respect to slavery, involuntary servitude, peonage, or forced labor;
- Permitted prosecution when nonviolent coercion is used to force victims to work in the belief they would be subject to serious harm;
- Permitted prosecution where the victim's service is compelled by confiscation of documents such as passports or birth certificates;
- Increased prison terms for all slavery violations from 10 years to 20 years and added life imprisonment where the violation involves the death, kidnapping, or sexual abuse of the victim;

¹ http://www.usaid.gov/our_work/cross-cutting_programs/trafficking/2594 (last visited Jan. 8, 2012).

² *Id.*

³ http://www.fbi.gov/news/stories/2006/june/humantrafficking_0612062594 (last visited Jan. 8, 2012).

⁴ Public Law 106-386.

- Required courts to order restitution and forfeiture of assets upon conviction; Enabled victims to seek witness protection and other types of assistance; and
- Gave prosecutors and agents new tools to get legal immigration status for victims of trafficking during investigation and prosecution.⁵

The TVPA was reauthorized in 2003 (H.R. 2620) and in 2005 (H.R. 972). On December 23, 2008, President Bush signed into law the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.⁶ The William Wilberforce Act added to the tools available to prosecute traffickers and increased protection and services for victims.⁷

Human Trafficking in Florida

In 2009, the Florida Legislature created within the Department of Children and Family Services the Florida Task Force on Human Trafficking "...for the express purpose of examining the problem of human trafficking and recommending strategies and actions for reducing or eliminating the unlawful trafficking of men, women, and children into this state."⁸ This same legislation also directed the Center for the Advancement of Human Rights at Florida State University to provide the Task Force with a "Statewide Strategic Plan on Human Trafficking."⁹ The 276-page Strategic Plan was published in October 2010.¹⁰

The Strategic Plan found that Florida is the third most popular American destination for human traffickers. Due to the agricultural nature of Florida, it has been known for many years that human trafficking in labor to work in our fields has been an issue. However, as a tourism-based economy, Florida is also ripe for trafficking in labor to work at restaurants, country clubs, and hotels. Labor trafficking is the most prevalent type of human trafficking that occurs in Florida. However, sex trafficking (including domestic minor sex trafficking) is also a significant problem, and is the most under-reported offense. The Strategic Plan states that "Sex trafficking in Florida remains a scourge throughout the state and is more complex and nuanced than previously thought."¹¹

Florida Human Trafficking Law

Florida first passed legislation specifically criminalizing human trafficking in 2004, making it a second-degree felony.¹² This legislation created separate statutes for involuntary servitude,¹³ human trafficking in labor and services,¹⁴ and human sex trafficking.¹⁵ In 2006, legislation amended Florida's human trafficking laws by adding legislative intent language, expanding the definition of "forced labor and services," criminalizing attempted trafficking, and including human trafficking within the crimes under which a civil remedy is available to the victim.¹⁶

Based on these legislative efforts, Florida has several laws that address human trafficking. Each addresses a particular aspect of human trafficking. Some of these laws are codified within ch. 787, F.S., relating to kidnapping, false imprisonment, luring or enticing a child, and custody offenses. Sex trafficking, a crime involved with human trafficking and modern-day slavery, is codified within ch. 796, F.S., relating to crimes involving prostitution. These statutes are:

⁵ Trafficking Victims Protection Act of 2000.

⁶ Pub. L. No. 110-457 (2008).

⁷ Polaris Project Action Center, The Trafficking Victims Protection Reauthorization Act Passed Congress, available at <http://actioncenter.polarisproject.org/take-action/advocate-for-policy> (last visited Jan. 8, 2012).

⁸ Section 1.(2)(a), ch. 2009-95, L.O.F.

⁹ Section 1.(3)(a), ch. 2009-95, L.O.F.

¹⁰ The plan is available and can be viewed at http://www.cahr.fsu.edu/sub_category/Florida_StrategicPlanonHumanTrafficking.html (last visited Jan. 8, 2012).

¹¹ Page 3 of the Strategic Plan.

¹² Chapter 2004-391, L.O.F.

¹³ Section 1 of ch. 2004-391, L.O.F., created s. 787.05, F.S., relating to unlawfully obtaining labor or services.

¹⁴ Section 2 of ch. 2004-391, L.O.F., created s. 787.06, F.S., relating to human trafficking for labor and services.

¹⁵ Section 4 of ch. 2004-391, L.O.F., created s. 796.045, F.S., relating to human sex trafficking.

¹⁶ Chapter 2006-168, L.O.F.

- Section 787.05, F.S., relating to *unlawfully obtaining labor or services*. The law makes it a second-degree felony for any person to knowingly obtain the labor or services of a person by:
 - Causing or threatening to cause bodily injury to that person or another person;
 - Restraining or threatening to restrain that person or another person without lawful authority and against her or his will; or
 - Withholding that person's governmental records, identifying information, or other personal property.
- Section 787.06, F.S., relating to *human trafficking*. “Human trafficking” is defined in that section as “transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport.” The law makes it a second-degree felony for any person to knowingly:
 - Engage, or attempt to engage, in human trafficking with the intent or knowledge that the trafficked person will be subjected to forced labor or services; or
 - Benefit financially by receiving anything of value from participation in a venture that has subjected a person to forced labor or services.
- Section 787.07, F.S., relating to *human smuggling*. The law makes it a first degree misdemeanor for a person to transport into Florida an individual who the person knows, or should know, is illegally entering the United States from another country. A person commits a separate offense for each individual he or she transports into Florida in violation of this section.
- Section 796.045, F.S., relating to *sex trafficking*. The law makes it a second-degree felony for any person to knowingly recruit, entice, harbor, transport, provide, or obtain by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution. However, a person commits a *first-degree* felony if the offense of sex trafficking is committed against a person who is under the age of 14, or if such offense results in death.

Criminal Punishment Code Offense Severity Ranking Chart

The Criminal Punishment Code (CPC) offense severity ranking chart is listed in s. 921.0022, F.S. The chart lists 10 offense levels, ranked from least severe (level 1 offenses), to most severe (level 10 offenses). Each felony offense is assigned to a level according to the severity of the offense, as determined by the Legislature. The higher the level a felony is designated, the more points that will appear on an offender’s CPC scoresheet. The offender’s score determines the possible sentence. If an offender scores more than 44 points, he or she is subject to a minimum term of imprisonment. If an offender scores 44 points or less, a judge is not required to sentence the offender to prison, but may still do so.¹⁷ If a specific offense is not listed in the CPC, then it defaults to a score as provided in s. 921.0023, F.S. Since the human trafficking crimes are not listed in the CPC, they default to a Level 4 (for second degree felonies) or a Level 7 (for first degree felonies).

Prosecutions under Florida Human Trafficking Laws

While Florida has adopted laws criminalizing human trafficking, they have not been used as anticipated. Information provided by the Florida Department of Law Enforcement shows almost no use of these statutes by law enforcement. There has been no use of s. 787.05, F.S. (unlawfully obtaining labor or services), or s. 796.045, F.S. (sex trafficking). There does appear to have been two arrests with one conviction under s. 787.06, F.S. (human trafficking), and one arrest under s. 787.07, F.S. (human smuggling).

The lack of use of these statutes is likely due to several factors. Human trafficking cases are difficult to prove and require the use of reluctant and transient witnesses. They typically cross law enforcement and prosecutorial jurisdictions. The Office of Statewide Prosecution is only authorized to prosecute human trafficking cases if they constitute racketeering. Finally, it is likely any human trafficking cases that are prosecuted are brought in federal courts using federal human trafficking laws. Federal human trafficking laws have much more severe penalties than Florida’s human trafficking laws.

¹⁷ Section 921.0024(2), F.S.

Effect of the Bill

Statewide Prosecutorial Jurisdiction

Current Situation

The Office of Statewide Prosecution (OSP), within the Office of the Florida Attorney General, investigates and prosecutes organized crime involving multiple judicial circuits and assists other law enforcement officials in their efforts against organized crimes. The prosecutors in the OSP work regularly with their federal and state counterparts to coordinate efforts against criminal activity. Section 16.56, F.S., lists the specific crimes the OSP investigates and prosecutes, and includes any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated, as well as any enumerated crime facilitated by or connected to use of the Internet.

Effect of the Bill

The bill expands the jurisdiction of the OSP by amending s. 16.56(a)(1)(15), to allow the OSP to investigate and prosecute any violation of ch. 787, F.S., as well as any and all offenses related to a violation of ch. 787, F.S.

Statewide Grand Jury Jurisdiction

Current Situation

The Governor may request the Florida Supreme Court to empanel a statewide grand jury to examine critical issues in criminal law affecting the state and to seek indictments against offenders. The subject matter jurisdiction of a statewide grand jury is limited to certain types of offenses, including, among others, bribery, narcotics crimes, Racketeer Influenced and Corrupt Organization Act violations, fraud or deceit upon a person, and child pornography or exploitation.¹⁸

Effect of the Bill

The bill expands the subject matter jurisdiction of a statewide grand jury by creating s. 905.34(13), F.S., to include any violation of ch. 787 F.S., as well as any and all offenses related to a violation of ch. 787, F.S.

Human Trafficking

Current Situation

Florida has several laws that address human trafficking. Each addresses a particular aspect of human trafficking. These laws are discussed in detail under the “Background” section above.

Effect of Bill

The bill combines the human trafficking provisions into one statute. The bill repeals s. 787.05, F.S. (unlawfully obtaining labor or services), and s. 796.045, F.S. (sex trafficking). These repealed provisions are revised and placed in a significantly amended s. 787.06, F.S. The revised human trafficking statute:

- Adds legislative intent regarding victims who may be U.S. citizens and are trafficked domestically.
- Applies to both trafficking for labor or services and to trafficking for commercial sexual activity.
- Amends the definition of “human trafficking” by eliminating the requirement that trafficking be “for transport.”
- Includes within the definition of “commercial sexual activity” prostitution, pornography, and sexually explicit performances.
- Increases penalties to first degree felonies.
- Eliminates the requirement that prohibited trafficking of minors for commercial sexual activity be “coerced.”
- Provides an enhanced penalty to those who traffic minors, whether for labor and services or for commercial sexual activity.

¹⁸ Section 905.34, F.S.

- Provides an enhanced penalty to those who traffic persons who are not legally authorized to work in the U.S.

The bill makes the following changes to the human trafficking statute:

Definitions:

The bill revises and adds several terms and definitions used in s. 787.06, F.S.

- *Coercion.* The bill replaces the term “forced labor or services” with the term “coercion.” The bill makes the providing of a controlled substance to any person for the purpose of exploitation of that person sufficient to constitute “coercion.”
- *Commercial Sexual Activity.* The bill defines “commercial sexual activity” as any violation of ch. 796, F.S.,¹⁹ or any *attempt* to commit such a violation, including sexually-explicit performances²⁰ and the production of pornography.
- *Human Trafficking.* The bill amends the definition of “human trafficking” so that it is no longer limited by the phrase “for transport,” and includes within its meaning “for the purpose of exploitation.”
- *Labor.* The bill provides a definition of “labor” to mean work of economic or financial value.
- *Services.* The bill adds a definition of “services” to mean any act committed:
 - At the behest of another; or
 - Under the supervision of another; or
 - For the benefit of another.²¹
- *Unauthorized Alien.* The bill defines an unauthorized alien as an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. s. 1324a(h)(3).²²
- *Venture.* The bill defines a venture as any group of two or more individuals associated *in fact*, whether or not they are a legal entity.

Prohibited Conduct and Related Penalties:

The bill amends s. 787.06(3), F.S., by prohibiting a person from knowingly, or in reckless disregard of the fact:

- Engaging in human trafficking;
- Attempting to engage in human trafficking; or
- Benefitting financially from participating in human trafficking.²³

The bill itemizes various types of prohibited exploitation. Each offense constitutes a first degree felony.²⁴ However, different CPC offense severity levels apply:²⁵

- *Coercion for labor or services:* The bill creates s. 787.06(3)(a), F.S., which provides that a person who is illegally involved in human trafficking by using coercion for *labor or services* commits a felony of the first degree, with a Level 7 CPC offense severity ranking.
- *Coercion for commercial sexual activity:* The bill creates s. 787.06(3)(b), F.S., which provides that a person who is illegally involved in human trafficking by using coercion for *commercial sexual activity* commits a felony of the first degree, with a Level 8 CPC offense severity ranking.

Enhanced Penalties. The bill provides for penalty enhancements based on the age of the minor victim involved in the human trafficking:

¹⁹ Chapter 796, F.S., prohibits prostitution.

²⁰ “Sexually-explicit performance” is defined as an act or show, whether public or private, live, photographed, recorded, or videotaped intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

²¹ “Services” includes, but is not limited to: forced marriage, servitude, or the removal of organs.

²² The bill provides that the term shall be interpreted consistently with that section and any applicable federal rules and regulations.

²³ Specifically, by receiving anything of value from participation in a venture that has subjected a person to human trafficking.

²⁴ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S. If the offense qualifies the offender as a “violent career criminal” under s. 775.084, F.S., it is punishable by a term of life imprisonment.

²⁵ See Section 18 of the bill.

- *Commercial sexual activity involving a minor*: The bill creates s. 787.06(3)(g), F.S., which enhances the penalty for human trafficking of minors (15-, 16-, or 17-years old victims) to a felony with a Level 9 CPC offense severity ranking. The bill also specifies the elements that must be proven in a prosecution under this paragraph, providing that the State does not need to prove that the defendant *knew* that the person had not attained the age of 18 years, *if* the defendant had a reasonable opportunity to observe the person who was subject to human trafficking.
- *Commercial sexual activity involving a child under age 15*: The bill creates s. 787.06(3)(h), F.S., which enhances the penalty for human trafficking of minors under the age of 15 for commercial sexual activity to a life felony with a Level 10 CPC offense severity ranking. The bill also specifies the elements that must be proven in a prosecution under this paragraph, providing that the State does not need to prove that the defendant *knew* that the person had not attained the age of 15 years, *if* the defendant had a reasonable opportunity to observe the person who was subject to human trafficking.
- *Coercion of unauthorized aliens*: The bill creates s. 787.06(3)(c), F.S., which provides that a person who is illegally involved in human trafficking by using coercion for labor or services of any individual who is an *unauthorized alien* commits a felony of the first degree, with a Level 8 CPC offense severity ranking.

The bill creates s. 787.06(3)(d), F.S., which provides that a person who is illegally involved in human trafficking by using coercion for commercial sexual activity of any individual who is an *unauthorized alien* commits a felony of the first degree, with a Level 9 CPC offense severity ranking.

- *Transport across state lines*: The bill creates s. 787.06(3)(e), F.S., which provides that a person who is illegally involved in human trafficking by using coercion for labor or services by the *transfer or transport of any individual from outside Florida* to within Florida commits a felony of the first degree, with a Level 7 CPC offense severity ranking.

The bill creates s. 787.06(3)(f), F.S., which provides that a person who is illegally involved in human trafficking by using coercion for labor or services or commercial sexual activity by the *transfer or transport of any individual from outside Florida* to within Florida commits a felony of the first degree, with a Level 8 CPC offense severity ranking.

The bill provides that each instance of human trafficking constitutes a separate crime, and authorizes separate punishment for each crime.

The bill creates s. 787.06(4), F.S., which makes it a first degree felony²⁶ for a parent, legal guardian, or other person having custody or control of a minor to:

- Transfer custody or control²⁷ of the minor, or offer to transfer custody or control of the minor;
- With knowledge or in reckless disregard to the fact that;
- As a consequence of the sale or transfer, the minor will be subject to human trafficking.

Legislative Findings:

The bill adds to Legislative findings by including the finding that “[v]ictims of human trafficking also include citizens of the United States and those persons trafficked domestically within the borders of the United States.”

²⁶ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S. If the offense qualifies the offender as a “violent career criminal” under s. 775.084, F.S., it is punishable by a term of life imprisonment.

²⁷ Transferring custody or control includes the act of selling the minor.

Human Smuggling

Current Situation

Section 787.07, F.S., relates to *human smuggling*. The law makes it a first degree misdemeanor²⁸ for a person to transport into Florida an individual who the person knows, or should know, is illegally entering the United States from another country. A person commits a separate offense for each individual he or she transports into Florida in violation of this section.

Effect of the Bill

The bill increases the penalty for the crime of human smuggling from a misdemeanor to a third degree felony with a Level 4 CPC offense severity ranking.

Selling or buying minors into sex trafficking or prostitution

Current Situation

Section 796.035, F.S., makes it a first degree felony²⁹ for any parent, legal guardian, or other person having custody or control of a minor to:

- Transfer custody or control of such minor, or offer to transfer custody³⁰ 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.

Effect of the Bill

The bill repeals s. 796.045, F.S., relating to sex trafficking, and expands the scope of s. 787.06, F.S., to include commercial sexual activity. It therefore amends s. 796.035, F.S., by narrowing the scope of prohibited activity from sex trafficking, specified commercial sexual activity, and prostitution, to prostitution only. The bill lowers the threshold of “knowledge” required in order to commit an offense by including “reckless disregard.” The bill ranks this first degree felony a Level 9 on the CPC offense severity rating chart.

Human Trafficking in Massage Establishments

Current Situation

Massage therapists and massage establishments in Florida are regulated by the Board of Massage Therapy (the board) in the Department of Health (DOH) under the Massage Practice Act.³¹ Under the Massage Practice Act, a person must be licensed as a massage therapist to practice massage for compensation and a massage establishment license is required at any facility where massage therapy services are offered.³² Prior to the board approving a license to operate a massage establishment, DOH must inspect the establishment to ensure it meets licensure requirements.³³ Once licensed, DOH inspects the establishment at least annually.³⁴

Currently, upon receiving a complaint that unlicensed activity is occurring, DOH’s Medical Quality Assurance inspectors coordinate with local law enforcement. It is a first degree misdemeanor³⁵ to operate an unlicensed massage establishment;³⁶ however, unlicensed practice of massage therapy is punishable as a third degree felony.^{37,38} DOH may issue cease and desist notices, enforceable by filing for an injunction, and may seek civil penalties against the unlicensed party in circuit court.³⁹ DOH may

²⁸ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

²⁹ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S. If the offense qualifies the offender as a “violent career criminal” under s. 775.084, F.S., it is punishable by a term of life imprisonment.

³⁰ Transferring custody or control includes the act of selling the minor.

³¹ The Massage Practice Act is codified at ch. 480, F.S. Rules adopted pursuant to the Act are codified at Chapter 64B7, F.A.C.

³² Section 480.047(1)(a), F.S. See also s. 480.033(4), F.S.

³³ Rule 64B7-26.004, F.A.C.

³⁴ Rule 64B7-26.005, F.A.C.

³⁵ Punishable by up to a year imprisonment and a fine of up to \$1,000.

³⁶ Section 480.047, F.S.

³⁷ Punishable by up to 5 years imprisonment and a fine of up to \$5,000.

³⁸ Section 456.065(d)1., F.S.

³⁹ Section 456.065(2)(c), F.S.

also impose, by citation, an administrative penalty up to \$5,000.⁴⁰ While DOH has investigative authority, it does not have arrest authority or sworn law enforcement personnel.

Sexual misconduct in the practice of massage therapy is defined as violation of the massage therapist-patient relationship through which the massage therapist attempts to seduce the patient or engage him or her in sexual activity outside the scope of generally accepted examination or treatment.⁴¹ While any sexual misconduct is strictly prohibited, massage establishments have been cited as locations where human sex trafficking occurs.⁴² The Florida Strategic Plan cites the important role that licensing and regulatory officials have in accessing sites where human sex trafficking occurs but where sworn law enforcement might require a warrant to search.⁴³

Effect of the Bill

The bill allows DOH investigators and law enforcement officers to enter a massage establishment and request valid government identification from the operator of the establishment, any person employed by the establishment, and any person performing massage therein. These identification documents must be immediately presented.

The bill defines valid government identification as a valid and unexpired:

- Driver's license (issued from any state, territory, or district of the United States);
- Identification card (issued from any state, territory, or district of the United States);
- U.S. Passport;
- Naturalization certificate (issued by the U.S. Dept. of Homeland Security);
- Alien Registration Receipt card, otherwise known as a green card; and
- Employment Authorization Card (issued by the U.S. Dept. of Homeland Security).

In addition, the bill requires the operator of a massage establishment to keep a copy of any valid government identification for each employee and any person performing massages in the establishment, which can be requested by DOH investigators and law enforcement.

Operators must also ensure that each employee and any person performing massage are able to immediately present valid government identification, upon the request of an investigator of the department or a law enforcement officer, while in the establishment.

Violations of this new provision are punishable as a:

- (a) Misdemeanor of the second degree for a first violation.⁴⁴
- (b) Misdemeanor of the first degree for a second violation.⁴⁵
- (c) Felony of the third degree for a third or subsequent violation.⁴⁶

Florida Contraband Forfeiture Act

Current Situation

Dispositions of liens and forfeited property. Sections 932.701-932.706, F.S., are known as the Florida Contraband Forfeiture Act. Contraband includes any real property or personal property used in the commission of any felony or obtained as a result of a violation of the Florida Contraband Forfeiture Act. An order of forfeiture gives the law enforcement agency that seized the property the right or title to the contraband property. The law enforcement agency can then retain the property for the agency's use or sell the property. Section 932.7055, F.S., governs the disposition of forfeited property.

⁴⁰ Section 456.065(2)(b), F.S.

⁴¹ Section 480.0485, F.S. *See also* Rule 64B7-26.010, F.A.C.

⁴² Page 11 of the Strategic Plan.

⁴³ *Id.*

⁴⁴ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

⁴⁵ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁴⁶ A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. sections 775.082 and 775.083, F.S.

Effect of the Bill

The bill provides that any real property or personal property may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act if it was used, attempted to be used, or was intended to be used for human trafficking.

Sexual Predator/Sexual Offender Criteria

Current Situation

Sexual predator registration: Section 775.21, F.S., provides that a person convicted of an enumerated sexual offense must be designated a “sexual predator.” Specifically, a person *must* be designated a sexual predator if he or she has been convicted of certain serious crimes related to sexual and lewd offenses, and similar offenses. A designated sexual predator must meet certain registration requirements. If the sexual predator is not in custody or under supervision, and the predator establishes or maintains a residence in this state, the predator must initially register in person at a sheriff’s office in the county of residence within 48 hours after establishing permanent or temporary residence.⁴⁷

Within 48 hours of initial registration, a sexual predator who is not incarcerated and who resides in the community must register at a driver’s license office of the Department of Highway Safety and Motor Vehicles (DHSMV) and present proof of registration, provide specified information, and secure a driver’s license, if qualified, or an identification card.⁴⁸ Each time a sexual predator’s driver’s license or identification card is subject to renewal, and within 48 hours after any change in the predator’s residence or name, he or she must report in person to a driver’s license facility of the DHSMV and is subject to specified registration requirements.⁴⁹ This information is provided to the Florida Department of Law Enforcement (FDLE) which maintains the statewide registry of all sexual predators and sexual offenders (discussed further below). FDLE maintains a searchable web-site containing the names and addresses of all sexual predators and offenders as well as a toll-free telephone number.

Extensive procedures are provided for notifying communities about certain information relating to sexual predators, much of which is compiled during the registration process.⁵⁰ A sexual predator must report in person every three months to the sheriff’s office in the county in which he or she resides to reregister.⁵¹ A sexual predator’s failure to comply with registration requirements is a third degree felony.⁵²

Sexual offender registration: In general terms, the distinction between a sexual predator and a sexual offender is based on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense was committed. Specifically, a sexual offender is a person who has been convicted of one of the following offenses and has been released on or after October 1, 1997 from the sanction imposed for the offense:

1. Kidnapping, false imprisonment or luring or enticing a child⁵³ where the victim is a minor and the defendant is not the victim's parent;
2. Sexual battery;⁵⁴
3. Procuring a person under the age of 18 for prostitution;⁵⁵
4. Selling or buying of a minor into sex trafficking or prostitution⁵⁶
5. Lewd or lascivious offenses;
6. Lewd or lascivious battery on an elderly person;⁵⁷
7. Promoting sexual performance by a child;⁵⁸

⁴⁷ Section 775.21(6)(e), F.S.

⁴⁸ Section 775.21(6)(f), F.S.

⁴⁹ Section 775.21(6)(g), F.S.

⁵⁰ Section 775.21(7), F.S.

⁵¹ Section 775.21(8), F.S.

⁵² Section 775.21(10), F.S.

⁵³ Section 787.025, F.S.

⁵⁴ Excluded are offenses contained in s. 794.011(10), F.S.

⁵⁵ Section 796.03, F.S.

⁵⁶ Section 796.035, F.S.

⁵⁷ Section 825.1025, F.S.

8. Selling or buying a minors for child pornography;
9. Selling or showing obscenity to a minor;⁵⁹
10. Using a computer to solicit sexual conduct of or with a minor;⁶⁰
11. Transmitting child pornography;⁶¹
12. Transmitting material harmful to minors;⁶²
13. Sexual misconduct by a Department of Juvenile Justice employee; ⁶³or
14. A violation of a similar law of another jurisdiction.

A sexual offender is required to report and register in a manner similar to a sexual predator. Failure of a sexual offender to comply with the registration requirements is a third degree felony.

Effect of the Bill

The bill amends ss. 775.21(4)(a), 943.0435(1)(a)1., 944.606(1)(b), and 944.607(1)(a)1., F.S., by adding *human trafficking for commercial sexual activity* offenses to the list of offenses that require an offender to be designated a sexual predator or sexual offender.

Wiretapping

Current Situation

Section 934.07, F.S., provides that the Governor, the Attorney General, the statewide prosecutor, or any state attorney may authorize an application to a judge of competent jurisdiction for, and such judge may grant, an order authorizing the interception of, wire, oral, or electronic communications by a law enforcement agency under certain conditions. Such authorization may be granted for the investigation of many felonies, including, among others, murder, kidnapping, terrorism, arson, gambling, robbery, burglary, theft, and dealing in stolen property.⁶⁴

Effect of the Bill

The bill expands the scope of s. 934.07, F.S., by authorizing the interception of wire, oral, or electronic communications when such interception may provide evidence of the commission of the offense of human trafficking.

Cross-Reference Corrections

Because the bill repeals s. 796.045, F.S., it removes cross references to s. 796.045, F.S., contained in:

- s. 90.404, F.S., relating to the admissibility of character evidence at trial;
- s. 772.102, F.S., relating to civil remedies for criminal practices;
- s. 794.056, F.S., relating to the Rape Crisis Program Trust Fund;
- s. 895.02(1)(a), F.S., relating to the Florida RICO (Racketeer Influenced and Corrupt Organization) Act; and
- s. 938.085, F.S., relating to additional cost to fund rape crisis centers.

B. SECTION DIRECTORY:

Section 1. Amends s. 16.56, F.S., relating to the Office of Statewide Prosecution.

Section 2. Creates s. 480.0535 relating to documents required while working in a massage establishment.

Section 3. Amends s. 775.21, F.S., relating to sexual predator criteria.

⁵⁸ Section 827.071, F.S.

⁵⁹ Section 847.0133, F.S.

⁶⁰ Section 847.0135, F.S.

⁶¹ Section 847.0137, F.S.

⁶² Section 847.0138, F.S.

⁶³ Section 985.701, F.S.

⁶⁴ Section 934.07(1), F.S.

- Section 4.** Repeals s. 787.05, F.S., relating to unlawfully obtaining labor or services.
- Section 5.** Amends s. 787.06, F.S., relating to human trafficking.
- Section 6.** Amends s. 787.07, F.S., relating to human smuggling.
- Section 7.** Amends s. 796.035, F.S., relating to selling or buying minors into prostitution and related penalties.
- Section 8.** Repeals s. 796.045, F.S., relating to sex trafficking and related penalties.
- Section 9.** Amends s. 905.34, F.S., relating to the jurisdiction of the statewide grand jury.
- Section 10.** Amends s. 934.07, F.S., relating to authorization for interception of wire, oral, or electronic communications.
- Section 11.** Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department and related penalties.
- Section 12.** Amends s. 944.606, F.S., relating to sexual offenders and notification upon release.
- Section 13.** Amends s. 944.607, F.S., relating to notification of Department of Law Enforcement of information on sexual offenders.
- Section 14.** Amends s. 90.404, F.S., relating to the admissibility of character evidence at trial.
- Section 15.** Amends s. 772.102, F.S., relating to civil remedies for criminal practices.
- Section 16.** Amends s. 794.056, F.S., relating to the Rape Crisis Program Trust Fund.
- Section 17.** Amends s. 895.02, F.S., relating to the definitions in the Florida RICO (Racketeer Influenced and Corrupt Organization) Act.
- Section 18.** Amends s. 938.085, F.S., relating to additional cost to fund rape crisis centers.
- Section 19.** Amends s. 921.0022, F.S., relating to the Criminal Punishment Code offense severity ranking chart.
- Section 20.** Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

See "D. Fiscal Comments" below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

See "D. Fiscal Comments" below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met January 30, 2012, and found the impact of the bill on state prison beds to be indeterminate. However, it is not anticipated that the bill will have a significant fiscal impact. While the bill increases penalties for human trafficking, it is not expected that the number of offenders will be high.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

The provisions of the bill addressing criminal provisions appear to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Board of Massage Therapy may need to amend its rules relating to massage practice based on the changes made by the bill. Adequate rulemaking authority exists within s. 480.035(7), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 12, 2012, the Judiciary Committee approved one amendment and reported the bill favorably. The amendment:

- Allows DOH investigators and law enforcement officers to enter a massage establishment and request valid government identification from the operator of the establishment, any person employed by the establishment, and any person performing massage therein.
- Requires operators to ensure that each employee and any person performing massage are able to immediately present valid government identification, upon the request of an investigator of the department or a law enforcement officer, while in the establishment.
- Provides criminal penalties for violations.

This analysis is drafted to the bill as passed by the Judiciary Committee.