

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 Committee on Children, Families, and Elder Affairs

BILL: SB 552

INTRODUCER: Senator Braynon

SUBJECT: Human Trafficking

DATE: March 27, 2013

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hendon	Hendon	CF	Pre-meeting
2.		CJ	
3.		JU	
4.			
5.			
6.			

I. Summary:

SB 552 authorizes victims or witnesses younger than 18 years old to testify in court using closed circuit television or video. Current law limits the use of such technology to children under the age of 16 years. The bill will enhance the ability of the state to receive testimony in human trafficking cases by protecting the victims from harm that would result from testifying in court in the presence of the defendants.

The bill will not have a fiscal impact on the state and has an effective date of July 1, 2013.

This bill substantially amends ss. 39.01, 95.54, and 92.56, and reenacts s. 847.01357, of the Florida Statutes:

II. Present Situation:

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, teenagers, men, and women. Victims are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.¹

The International Labor Organization (ILO), the United Nations agency charged with addressing labor standards, employment, and social protection issues, estimates that there are at least

¹ U.S. Department of Health and Human Services, Administration for Children and Families, *About Human Trafficking*, available at <http://www.acf.hhs.gov/trafficking/about/index.html#> (last visited on March 27, 2013).

12.3 million adults and children in forced labor, bonded labor, and commercial sexual servitude at any given time.² The federal government has estimated that the number of persons trafficked into the United States each year ranges from 14,500-17,500.³ An estimated 200,000 American children are at risk for trafficking into the sex industry each year, according to the U.S. Department of Justice.⁴

After drug dealing, trafficking of humans is tied with arms dealing as the second largest criminal industry in the world and is also the fastest growing. Many victims of human trafficking are forced to work in prostitution or the sex entertainment industry. However, trafficking also occurs in forms of labor exploitation, such as domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work.⁵

Federal Trafficking Law

In 2000, Congress enacted the Trafficking Victims Protection Act (TVPA) to “combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”⁶ The TVPA not only criminalizes human trafficking, but it also requires that victims, who might otherwise be treated as criminals (e.g. engagement in prostitution), be treated as victims of crime and be provided with health and human services if they cooperate with prosecutions.

The Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003), Pub. Law 108-193, reauthorized the TVPA and added responsibilities to the U.S. Government’s anti-trafficking portfolio. In particular, the TVPRA 2003 mandated new information campaigns to combat sex tourism, added refinements to the federal criminal law provisions, and created a new civil action that allows victims to sue their traffickers in federal district court. In addition, the TVPRA 2003 required an annual report from the Attorney General to Congress.⁷

The Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005), Pub. Law 108-164, reauthorized the TVPA and authorized new anti-trafficking resources, including grant programs to assist state and local law enforcement efforts and expand victim assistance programs to U.S. citizens or resident aliens subjected to trafficking; authorized pilot programs to establish residential rehabilitative facilities for trafficking victims, including one program aimed at juveniles; and provided extraterritorial jurisdiction over trafficking offenses committed overseas by persons employed by or accompanying the federal government.⁸

² See U.S. Department of State, *The 2009 Trafficking in Persons (TIP) Report*, June 2009, available at <http://www.state.gov/g/tip/rls/tiprpt/2009/> (last visited on March 27, 2013).

³ Sonide Simon, *Human Trafficking and Florida Law Enforcement*, Florida Criminal Justice Executive Institute, pg. 2, March 2008, available at <http://www.fdle.state.fl.us/Content/getdoc/e77c75b7-e66b-40cd-ad6e-c7f21953b67a/Human-Trafficking.aspx> (last visited on March 27, 2013).

⁴ *Id.* at 3.

⁵ *Supra* fn. 1.

⁶ Trafficking Victims Protection Act of 2000, Pub. Law No. 106-386, H.R. 3244, 106th Cong. (October 28, 2000).

⁷ Attorney General’s Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons, pg. 2 (July 2010), available at <http://www.justice.gov/ag/annualreports/agreportherumantrafficking2011.pdf> (last visited on March 27, 2013).

⁸ *Id.* at 3

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. Law 110-457, reauthorized the TVPA for 4 years and authorized new measures to combat human trafficking. The TVPRA 2008:

- Created new crimes imposing severe penalties on those who obstruct or attempt to obstruct the investigations and prosecutions of trafficking crimes;
- Changed the standard of proof for the crime of sex trafficking by force, fraud, or coercion by requiring that the government merely prove that the defendant acted in reckless disregard of the fact that such means would be used;
- Broadened the reach of the crime of sex trafficking of minors by eliminating the requirement to show that the defendant knew that the person engaged in commercial sex was a minor in cases where the defendant had a reasonable opportunity to observe the minor;
- Expanded the crime of forced labor; imposed criminal liability on those who, knowingly and with intent to defraud, recruit workers from outside the U.S. for employment within the U.S. by making materially false or fraudulent representations;
- Enhanced the penalty for conspiring to commit trafficking-related crimes; and
- Penalized those who knowingly benefit financially from participating in a venture that engaged in trafficking crimes.⁹

Florida Statewide Task Force on Human Trafficking

The Florida Statewide Task Force on Human Trafficking was created in 2009¹⁰ with 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 Florida. The Florida State University Center for the Advancement of Human Rights was directed to submit a statewide strategic plan to the task force by November 1, 2009.¹¹ The strategic plan addressed the following subjects:

- A description of available data on human trafficking in Florida;
- Identification of available victim programs and services;
- Evaluation of public awareness strategies;
- Assessment of current laws; and
- A list of recommendations produced in consultation with governmental and non-governmental organizations.¹²

2012 Legislation on Human Trafficking

The 2012 legislature passed HB 7049 (2012-97, L.O.F.) to make comprehensive changes to the criminal statutes regarding human trafficking. The new law, which took went into effect July 1, 2012:

⁹ *Id.*

¹⁰ See ch. 2009-95, Laws of Florida.

¹¹ Florida State University, Center for the Advancement of Human Rights, *Florida Strategic Plan on Human Trafficking*, available at <http://www.dcf.state.fl.us/initiatives/humantrafficking/docs/FSUStrategicPlan2010.pdf> (last visited on March 27, 2013).

¹² *Id.*

- Combined Florida's three existing human trafficking statutes into one statute making it more user-friendly for law enforcement;
- Increased penalties for crime of human smuggling from a first-degree misdemeanor to a third degree felony;
- Provided that those convicted of human sex trafficking may be designated as sex offenders and sex predators;
- Provided that any property used for human trafficking is subject to forfeiture;
- Required massage establishments and employees to present valid photo identification upon request; and
- Gave jurisdiction for human trafficking to the Statewide Prosecutor and the Statewide Grand Jury.

Use of Closed Circuit Television in Court

Courts have allowed victims of child abuse to testify through closed circuit television (CCTV) to protect the child victim of abuse. There are 46 states that allow for the use of CCTV for a child to testify without appearing in court.¹³ CCTV allows a child to testify in one room, with the child's image and statements electronically sent into another room to be heard and seen on a monitor. Closed circuit television can be either a one-way system or a two-way system. In a one-way system, the child's image and statements are seen and viewed in a room separate from the child. Currently, 11 states statutorily require the use of a two-way closed circuit television system that allow officers in the court to ask questions of the child: California, Georgia, Hawaii, Indiana, Montana, New York, Tennessee, Vermont, Virginia, and West Virginia.¹⁴

States vary on the age requirements for a child to testify by closed circuit television. Alaska, Florida, Michigan, New Hampshire, New Jersey, Mississippi, New Mexico allow the use of CCTV for a child who is 16 years of age or younger.¹⁵ Alabama and Massachusetts allow for the use of CCTV for a child younger than 15. Arizona and Nevada provide for the use of CCTV for a child 14 years of age or younger. Kansas, California, Tennessee, Utah, and West Virginia allow the use of CCTV for a child 13 years of age and younger. Wisconsin allows CCTV for a child under 12 or in the "interest of justice" when a child under 16 years of age is testifying.

The United States Supreme Court affirmed in *Maryland v. Craig*¹⁶ the state interest in protecting the well-being of child abuse victims and protecting child victims from further harm. In that case, the court set the standard for the use of CCTV in court by holding that CCTV may only be used when testifying in front of the defendant will cause the child emotional trauma that impairs the child's ability to communicate. This determination must be made on a case-by-case basis.¹⁷ Testifying in front of the defendant can be harmful to child victims and can negatively impact their ability to testify in court. Closed circuit television can be used to protect children, facilitate their testimony, and hold accountable perpetrators of child abuse.

¹³ Margaret Brancatelli, *Facilitating Children's Testimony: Closed Circuit Television*, National Center for Prosecution of Child Abuse Update. Volume 21, Number 11, 2009.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Maryland v. Craig*, 110 S. Ct. 3157, 3196 (1990).

¹⁷ *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 39.01, F.S., to add cross references to the definition of sexual abuse of a child in s. 787.06, F.S. The new cross references are to conform the section to changes made by HB 7049 (2012-97, L.O.F.) in the 2012 Legislative Session.

Section 2 amends s. 92.54, F.S., to authorize victims or witnesses younger than 18 years old to testify in court using closed circuit television or video. Current law allows victims or witnesses younger than 16 to testify in this manner. This change will make such testimony easier on the victim and increase the chances that such testimony can be successfully offered in court.

Section 3 amends s. 92.56, F.S., to add cross references to s. 787.06, F.S., to conform the section to changes made by HB 7049 (2012-97, L.O.F.) in the 2012 Legislative Session.

Section 4 reenacts subsection (3) of s. 847.01357, F.S., to provide for a pseudonym for victims.

Section 5 provides an effective date of July 1, 2013.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
