

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 1294

INTRODUCER: Senator Grimsley

SUBJECT: Offenses Involving Minors and Vulnerable Persons

DATE: January 29, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Favorable</b>
2.			JU	
3.			FP	

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**I. Summary:**

SB 1294 broadens the application of the witness or victim protections found in s. 92.54, F.S., by amending the cut-off age from under the age of 16 to under the age of 18. This will allow the court to protect a witness or victim who is a minor from “at least moderate emotional or mental harm due to the presence of the defendant” if the child is required to testify in open court in the defendant’s presence.

The bill amends the felony murder statutes to include the crime of human trafficking as a qualifying offense for the charge of felony murder as found in s. 782.04(1)(a)2. and (3), F.S.

The human trafficking statute is amended to punish great bodily harm, permanent disability, or permanent disfigurement caused to the victim of the underlying human trafficking offense.

The bill clarifies that if a person permanently brands or directs another to permanently brand another *for the purpose of committing a human trafficking offense* it is a second degree felony. The clarification limits this offense of branding to human trafficking circumstances.

The bill eliminates a potential defense to human trafficking crimes. If the victim of the human trafficking offense is under the age of 18 at the time of the crime, his or her lack of chastity or willingness or consent is not a defense to the human trafficking crime.

Section 794.022, F.S., dealing with rules of evidence is amended to include victims of human trafficking and victims of lewd or lascivious offenses in the list of offenses for which the admission of certain evidence may be limited. The amendment provides that victims of those crimes need not have their testimony corroborated nor should specific instances of prior consensual sexual activity with anyone other than the offender be admitted into evidence in a criminal prosecution except under limited circumstances. These evidentiary standards currently apply only for victims of sexual battery.

Numerous sections of the Florida Statutes are amended to clarify a citation from the human trafficking chapter that was merged with another paragraph by Chapter 2014-160, L.O.F.

The bill becomes effective on July 1, 2016.

## II. Present Situation:

### Victim or Witness Testimony via Closed Circuit Television

Section 92.54, F.S., provides for a victim or witness under the age of 16 or who has an intellectual disability may testify via closed circuit television under limited circumstances.

The court must first find that the victim or witness will suffer at least moderate emotional or mental harm due to the presence of the defendant if required to testify in open court.<sup>1</sup>

There must be an adequate showing of necessity, but if shown, the State's interest in protecting child witnesses from the trauma of testifying in the presence of the defendant is sufficiently important to justify the use of a special procedure for giving testimony.<sup>2</sup> In order to balance the defendant's right to confront his or her accuser with the State's interest, the court must:

- Determine whether a procedure such as closed circuit television is necessary to protect the child's welfare;
- Find that the child would be traumatized by the presence of the defendant, not by the courtroom experience generally; and
- Find that the emotional distress suffered by the child in the presence of the defendant is not just mere nervousness, excitement, or reluctance to testify.<sup>3</sup>

The court should make specific findings of fact on the record or by court order, not simply adopt the testimony of a loved one or expert.<sup>4</sup>

The defendant, who may be required to view the testimony from the courtroom, must be provided with the means to have immediate and direct communication with his or her counsel conducting cross-examination.<sup>5</sup>

The victim or witness, his or her attorney, parent, legal guardian or guardian ad litem may file the motion for the child victim or witness to testify via closed circuit television from outside the courtroom.<sup>6</sup> Only the persons specified in s. 92.54(3), F.S., may be present during the victim's or witness's testimony.<sup>7</sup>

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<sup>1</sup> Section 92.54(1), F.S.

<sup>2</sup> *Maryland v. Craig*, 110 S.Ct. 3157 (1990).

<sup>3</sup> *Id.*

<sup>4</sup> *Hopkins v. State*, 632 So.2d 1372 (Fla. 1994).

<sup>5</sup> Section 92.54(4), F.S.

<sup>6</sup> Section 92.54(2), F.S.

<sup>7</sup> These persons are: the judge, prosecutor, defense attorney, videotape equipment operators, an interpreter, and some other person approved by the court for the victim or witness's support, in addition to the defendant (presumably unless the court has ruled that he or she is required to listen and watch from the courtroom pursuant to s. 92.54(4), F.S.).

## Human Trafficking

Section 787.06, F.S., punishes human trafficking, which the statute defines as the “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person.” The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking using labor or services or for commercial sexual activity.<sup>8</sup>

## Felony Murder

Felony murder occurs when a person is killed during the commission or attempted commission of a crime designated in s. 782.04(1)(a)2.a.-r. and (3)(a)-(r).

The listed crimes are any:

- a. Trafficking offense prohibited by s. 893.135(1),
- b. Arson,
- c. Sexual battery,
- d. Robbery,
- e. Burglary,
- f. Kidnapping,
- g. Escape,
- h. Aggravated child abuse,
- i. Aggravated abuse of an elderly person or disabled adult,
- j. Aircraft piracy,
- k. Unlawful throwing, placing, or discharging of a destructive device or bomb,
- l. Carjacking,
- m. Home-invasion robbery,
- n. Aggravated stalking,
- o. Murder of another human being,
- p. Resisting an officer with violence to his or her person,
- q. Aggravated fleeing or eluding with serious bodily injury or death,
- r. Felony that is an act of terrorism or is in furtherance of an act of terrorism.<sup>9</sup>

Felony murder in the third degree<sup>10</sup> occurs when a person is killed, without any design to effect death, during the commission or attempted commission of any felony other than the designated crimes found in s. 782.04(4), F.S.

The listed crimes are any:

- (a) Trafficking offense prohibited by s. 893.135(1),
- (b) Arson,
- (c) Sexual battery,

<sup>8</sup> See s. 787.06(3) and (4), F.S.

<sup>9</sup> If the person is killed by the person committing or attempting to commit the listed crime, the murder is a capital offense punishable by death or life imprisonment. If the person is killed by a person other than the one committing or attempting to commit the listed crime, the one who is committing or attempting to commit the crime is responsible for the death. Under those circumstance, it is a second degree murder, punishable by 30 years to life imprisonment.

<sup>10</sup> Third degree murder is punishable as a second degree felony punishable by up to 15 years imprisonment.

- (d) Robbery,
- (e) Burglary,
- (f) Kidnapping,
- (g) Escape,
- (h) Aggravated child abuse,
- (i) Aggravated abuse of an elderly person or disabled adult,
- (j) Aircraft piracy,
- (k) Unlawful throwing, placing, or discharging of a destructive device or bomb,
- (l) Unlawful distribution of any substance controlled under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or opium or any synthetic or natural salt, compound, derivative, or preparation of opium by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,
- (m) Carjacking,
- (n) Home-invasion robbery,
- (o) Aggravated stalking,
- (p) Murder of another human being,
- (q) Aggravated fleeing or eluding with serious bodily injury or death,
- (r) Resisting an officer with violence to his or her person, or
- (s) Felony that is an act of terrorism or is in furtherance of an act of terrorism.

### Rules of Evidence Applicable to Sexual Offenses

In many U.S. jurisdictions, laws exist to prevent specific instances of the victim's prior sexual conduct from being admitted at trial in a prosecution for sexual battery or other sexual misconduct charges.<sup>11</sup> These laws are commonly referred to as "Rape Shield" laws.<sup>12</sup> Section 794.022, F.S., is Florida's Rape Shield law, and it has long been considered a codification of the rule of relevancy that a victim's prior sexual conduct is generally irrelevant in determining the defendant's guilt.<sup>13</sup> It applies only to criminal prosecutions for sexual battery under s. 794.011, F.S., and provides that:

- The victim's testimony doesn't have to be corroborated by other evidence;
- Specific instances of the victim's sexual history with people other than the offender are inadmissible unless:
  - The evidence is introduced to prove that the defendant wasn't the source of physical evidence, such as semen; or
  - When consent is at issue, the evidence proves a pattern of the victim's conduct or behavior that is so similar to the conduct or behavior in the case that it is relevant to the issue of consent.
- The victim's reputation for sexual behavior is inadmissible;
- Evidence presented to prove the victim's appearance prompted the sexual battery is inadmissible;

<sup>11</sup> Nat'l Dist. Attorney's Ass'n, *Rape Shield Statutes*, NAT'L DIST. ATTORNEY'S ASS'N (March 2011) (available at [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiMI-Xc06XKAhWFHD4KHVs-ByAQFggcMAA&url=http%3A%2F%2Fwww.ndaa.org%2Fpdf%2FNCPCA%2520Rape%2520Shield%25202011.pdf&usq=AFQjCNGb9ME\\_OADBM-qIDOCmtYCs3dYB7g](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiMI-Xc06XKAhWFHD4KHVs-ByAQFggcMAA&url=http%3A%2F%2Fwww.ndaa.org%2Fpdf%2FNCPCA%2520Rape%2520Shield%25202011.pdf&usq=AFQjCNGb9ME_OADBM-qIDOCmtYCs3dYB7g)) (last visited Jan. 12, 2016).

<sup>12</sup> See *Lewis v. State*, 591 So. 2d 922, 924 (Fla. 1991).

<sup>13</sup> *Marr v. Florida*, 494 So. 2d 1139, 1142-43 (Fla. 1986).

- When consent is a defense, evidence of the victim’s mental incapacity or defect can be admitted to prove that consent was not given;
- An offender’s use of a prophylactic device, or a victim’s request that an offender use a prophylactic device, is not independently relevant.<sup>14</sup>

The United States Code also has a Rape Shield statute. In contrast to Florida’s Rape Shield law, the federal statute is not limited to sexual battery offenses; rather, the federal statute applies to *any* criminal or civil proceeding involving alleged sexual misconduct.<sup>15</sup> As such, federal courts have repeatedly held that a victim’s prior history of sexual behavior, such as exotic dancing or prostitution, is irrelevant and inadmissible in prosecutions for crimes such as sex trafficking, forced labor, sex trafficking by force, fraud, or coercion, and sex trafficking of a child.<sup>16</sup>

### III. Effect of Proposed Changes:

The bill broadens the application of the witness or victim protections found in s. 92.54, F.S., by amending the cut-off age from under the age of 16 to under the age of 18. This will allow the court to protect a witness or victim who is a minor from “at least moderate emotional or mental harm due to the presence of the defendant” if the child is required to testify in open court in the defendant’s presence.

The bill amends the felony murder statutes to include the crime of human trafficking as a qualifying offense for the charge of felony murder as found in s. 782.04(1)(a)2. and (3), F.S. The bill also adds human trafficking to the list of crimes that do not qualify as an underlying third degree felony murder found in s. 782.04(4), F.S.

The human trafficking statute is amended to punish great bodily harm, permanent disability, or permanent disfigurement caused to the victim of the underlying human trafficking offense. The offense is a first degree felony punishable by a term of imprisonment of 30 years to life.

Additionally, the bill clarifies that if a person permanently brands or directs another to permanently brand another *for the purpose of committing a human trafficking offense* it is a second degree felony. Therefore the clarification limits this offense of branding to human trafficking circumstances.

The bill eliminates a potential defense to human trafficking crimes. If the victim of the human trafficking offense is under the age of 18 at the time of the crime, his or her lack of chastity or willingness or consent is not a defense to the human trafficking crime.

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<sup>14</sup> Section 794.022, F.S.

<sup>15</sup> 28 U.S.C. § 412.

<sup>16</sup> See *United States v. Rivera*, 799 F.3d 180, 185 (2d Cir. 2015) (holding that “[e]vidence of victims’ prior acts of commercial sex is irrelevant to whether those victims were coerced into working as prostitutes.”); *United States v. Roy*, 781 F.3d 416, 420 (8th Cir. 2015) (holding that the victim’s participation in prostitution before or after the alleged incident is irrelevant to whether the defendant threatened her, beat her, or took her money); *United States v. Cephus*, 684 F.3d 703, 708 (7th Cir. 2012)(holding that the victim’s prior history of prostitution was irrelevant to proving that she consented to having her wages withheld and be beaten).

Section 794.022, F.S., dealing with rules of evidence is amended to include victims of human trafficking and victims of lewd or lascivious offenses<sup>17</sup> in the list of offenses for which the admission of certain evidence may be limited. The amendment provides that victims of those crimes need not have their testimony corroborated nor should specific instances of prior consensual sexual activity with anyone other than the offender be admitted into evidence in a criminal prosecution except under limited circumstances.

Sections 90.404, 775.21, 943.0435, 944.606, and 944.607 are amended to conform and clarify the proper citation for s. 787.06(3)(h), F.S. (2012). Paragraph (h) of s. 787.06(3), F.S., was merged with paragraph (g) of that section in ch. 2014-160, Laws of Florida.

The bill becomes effective July 1, 2016.

#### **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:

Based upon the preliminary assessment of the potential prison bed impact of the bill it is anticipated that the bill may have a positive insignificant impact on the number of prison beds necessary to accommodate persons convicted under the new and amended criminal offenses.

#### **VI. Technical Deficiencies:**

None.

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<sup>17</sup> Sections 787.06 and 800.04, F.S.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 92.54, 782.04, 787.06, 794.022, 90.404, 775.21, 943.0435, 944.606, and 944.607.

**IX. Additional Information:**

**A. Committee Substitute – Statement of 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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