

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 Appropriations

BILL: CS/SB 1046

INTRODUCER: Children, Families, and Elder Affairs Committee; and Senators Book and Campbell

SUBJECT: Trust Fund for Victims of Human Trafficking and Prevention/Department of Law Enforcement

DATE: February 21, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Sadberry</u>	<u>Hansen</u>	<u>AP</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1046 creates the Trust Fund for Victims of Human Trafficking and Prevention within the Florida Department of Law Enforcement (FDLE). The trust fund consists of civil penalties imposed by, and punitive damages awarded by, the courts in civil actions brought on behalf of victims of human trafficking and funds received from any other sources including legislative appropriations.

The Florida Constitution requires a bill creating a new trust fund to pass by a three-fifths vote of the membership of each chamber of the Legislature. State trust funds must terminate not more than four years after the effective date of the bill authorizing the initial creation of the trust fund unless the Legislature sets a shorter time.

The bill provides that it shall take effect on the same date that SB 1044 or similar legislation takes effect, if such legislation is adopted in the same session and becomes law. The effective date of CS/SB 1044 is October 1, 2018.

II. Present Situation:

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, men, and women, who are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. There is an estimated 20.9 million adults and children in

the world who are in some sort of forced labor or sexual exploitation. Of that number, an estimated 26 percent of them are children, and in 2010, it was estimated that as many as 300,000 children in the United States were at risk for exploitation each year.¹

Section 787.06, F.S., is Florida's human trafficking statute and defines "human trafficking" 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 by using labor or services or through commercial sexual activity.²

SB 1044 Human Trafficking

CS/SB 1044, which is linked to SB 1046, creates a civil cause of action for victims of human trafficking to bring against the trafficker³ or facilitator⁴ of human trafficking. The bill allows a victim to bring a civil action against the trafficker or facilitator of human trafficking who victimized the victim.

A victim who prevails in any such action is entitled to recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs.

If a victim prevails in an action, the court must award a civil penalty against the defendant of \$50,000. This penalty is in addition to, and not in lieu of, any other damage award. The civil penalty cannot be disclosed to the jury. The proceeds from the civil penalty must be deposited into the trust fund.

If a victim recovers punitive damage in an action, the court must distribute the punitive damages award equally between the victim and the trust fund.

III. Effect of Proposed Changes:

Section 1 creates the Trust Fund for Victims of Human Trafficking and Prevention within FDLE. The bill requires that the trust fund must consist of civil penalties imposed by, and punitive damages awarded by, the courts in civil actions brought on behalf of victims and funds received from any other source, including legislative appropriations. The bill also requires the FDLE to administer the trust fund.

The purposes of the trust fund include, but are not limited to:

¹ U.S. Department of Justice, Office of Justice Programs, *OJP Fact Sheet, Fast Facts*, (December 2011) available at http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html (last visited February 8, 2018). Polaris, *Human Trafficking: The Facts*, 2016, available at <https://polarisproject.org/facts> (last visited February 8, 2018).

² See ss. 787.06(3) and (4), F.S.

³ SB 1044 defines a "trafficker" as any person who knowingly engages in human trafficking, attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking.

⁴ SB 1044 defines a "facilitator" as a person who knowingly, or in willful blindness, assists or provides goods or services to a trafficker, which assist or enable the trafficker to carry out human trafficking.

- Educating the public about the recruitment, trafficking, and exploitation of persons in connection with human trafficking;
- Assisting in the prevention of the recruitment of minors in Florida schools for exploitation;
- Establishing a survivors' resource center to make available to survivors of human trafficking legal services, social services, safe harbors, safe houses, and language services;
- Advertising the National Human Trafficking Resource Center hotline number and the BeFree Textline in diverse venues;
- Assisting in the coordination between law enforcement and service providers;
- Assisting in vacating any convictions of minors who were victims of human trafficking, whose offenses were the result of force, duress, or coercion, and
- Providing medical and mental health examinations and treatment, living expenses, lost wages, and repatriation services to human trafficking victims.

The bill provides FDLE with the ability to contract entities having appropriate expertise and experience to manage and provide services outlined in the trust fund.

In accordance with section 19(f)(2), Art. III, of the Florida Constitution, the trust fund must, unless terminated sooner, be terminated on July 1, 2022. Before its scheduled termination, the trust fund must be reviewed as provided in s. 215.3206(1) and (2), F.S.

Section 2 provides that the bill shall take effect on the same date that SB 1044 or similar legislation takes effect, if such legislation is adopted in the same session and becomes law. The effective date of CS/SB 1044 is October 1, 2018.

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:

The FDLE's agency bill analysis states that post-conviction compensation to victims falls outside of the department's current defined mission and normal scope of operations. FDLE suggests that the Department of Legal Affairs may be a more appropriate entity to administer the trust fund.⁵

VIII. Statutes Affected:

This bill creates section 787.0611 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on February 12, 2018:

- Eliminates the requirement that funds must only be used for medical and mental health examinations and treatment, living expenses, lost wages, and repatriation services for human trafficking victims.
- Requires that funds be used either directly to aid victims and/or for activities and programs related to victim assistance, education, repatriation, and other related purposes.
- Provides FDLE with the ability to contract entities having appropriate expertise and experience to manage and provide services outlined in the trust fund.

B. Amendments:

None.

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

⁵ *Supra* at note 5.