

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 219 Victims of Human Trafficking
SPONSOR(S): Criminal Justice Subcommittee, Overdorf
TIED BILLS: **IDEN./SIM. BILLS:** SB 370

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Bruno	Hall
2) Justice Appropriations Subcommittee	11 Y, 0 N	Jones	Gusky
3) Judiciary Committee			

SUMMARY ANALYSIS

Under Florida law, human trafficking is transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person. Human trafficking may be for labor or commercial sexual activity. A person may not engage in human trafficking, attempt to engage in human trafficking, or benefit financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for commercial sexual activity:

- By using coercion;
- With a child younger than 18; or
- With a mentally defective or mentally incapacitated person.

Human trafficking schemes sometimes operate out of strip clubs, where victims, including minors, are recruited as dancers, servers, or hostesses, but are expected to provide commercial sex to customers. In 2014, police arrested four people for trafficking a 13-year-old girl at a Miami Beach strip club, where the girl was forced to perform fully nude and engage in commercial sexual activity.

CS/HB 219 expands the definition of an “adult theater” to include a strip club, allowing the Department of Business and Professional Regulation to enforce adult theater age verification requirements and prevent a strip club from employing minors. The bill also penalizes a violation of the age verification and documentation requirements by an adult theater owner, operator, or manager as a first degree misdemeanor, punishable by up to one year in county jail and a \$1,000 fine.

A person may not solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation. A first solicitation offense is a first degree misdemeanor, punishable by up to one year in county jail and a \$1,000 fine. A second solicitation offense is a third degree felony, punishable by up to five years in prison and a \$5,000 fine; and a third or subsequent offense is a second degree felony, punishable by up to 15 years in prison and a \$10,000 fine.

The bill requires a court to impose a:

- 10-day mandatory minimum term of incarceration for a person convicted of solicitation of prostitution, assignation, or lewdness.
- 30-day mandatory minimum term of incarceration for any person convicted of soliciting, inducing, enticing, or procuring a past or present victim of human trafficking, consecutive to the 10-day mandatory minimum imposed for solicitation.

The bill may insignificantly increase the need for jail beds by requiring a mandatory minimum term of incarceration in jail and creating a new misdemeanor offense.

The bill has an effective date of July 1, 2019.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0219c.JUA

DATE: 4/2/2019

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Human Trafficking

Human trafficking is modern-day slavery involving exploitation of:

- An adult by using fraud, force, or coercion, or
- A minor.¹

The International Labor Organization, the United Nations agency charged with addressing labor standards, employment, and social protection issues, estimates that as many as 27 million adults and children are subject to human trafficking 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 to 17,500.³

Human trafficking may be for commercial sexual activity or labor, commonly in areas such as domestic work, agriculture, traveling sales, and food service.⁴ Of cases reported to the National Human Trafficking Hotline, most are for sex trafficking, with 6,081 reported sex trafficking cases out of 8,524 total reported cases in 2017.⁵ Florida has the third highest number of human trafficking cases reported to the hotline, behind California and Texas.⁶

Actors in a sex-trafficking scheme are commonly known as:

- A pimp, who controls and financially benefits from the commercial sexual exploitation of another person.
- A John, who pays for or trades something of value for sexual acts.
- A bottom, who is a female appointed by the pimp to supervise and report rule violations.
- A madam, who is an older woman who manages a brothel, escort service or other prostitution establishment.⁷

Studies have shown that, under basic supply and demand economics, targeting Johns effectively reduces commercial sexual activity and sex-trafficking.⁸ Demand reduction tactics such as reverse

¹ S. 787.06, F.S.

² U.S. Department of State, *The 2013 Trafficking in Persons (TIP) Report* (June 2013), <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm> (last visited Mar. 29, 2019).

³ Sonide Simon, *Human Trafficking and Florida Law Enforcement*, Florida Criminal Justice Executive Institute, pg. 2 (Mar. 2008), <http://www.fdle.state.fl.us/Content/getdoc/e77c75b7-e66b-40cd-ad6e-c7f21953b67a/Human-Trafficking.aspx> (last visited Mar. 26, 2019).

⁴ Abt Associates, *A National Overview of Prostitution and Sex Trafficking Demand Reduction Efforts: Final Report* (Apr. 30, 2012), prepared for the National Institute of Justice, U.S. Department of Justice, <http://www.demandforum.net/wp-content/uploads/2012/01/abt-national-assessment-final-report-4-30-2012.pdf> (last visited Mar. 29, 2019); Shea Rhodes, *Why Focusing on Demand for Commercial Sex is an Effective Means to Deter Commercial Sexual Exploitation*, Institute to Address Criminal Sexual Exploitation, <https://cseinstitute.org/wp-content/uploads/2015/06/Why-Focusing-on-Demand-for-Commercial-Sex-is-an-Effective-Means-to-Deter-Commercial-Sexual-Exploitation.pdf> (last visited Mar. 29, 2019); Brittany Anthony, Jennifer Kimball Penrose, and Sarah Jakiel, *The Typology of Modern Slavery: Defining Sex and Labor Trafficking in the United States*, Polaris (Mar. 2017), <https://polarisproject.org/typology-report> (last visited Mar. 29, 2019).

⁵ National Human Trafficking Hotline, *Hotline Statistics*, <https://humantraffickinghotline.org/states> (last visited Mar. 28, 2019).

⁶ *Id.*

⁷ In Public Safety, *Know the Language of Human Trafficking: A Glossary of Sex Trafficking Terms*, <https://inpublicsafety.com/2014/07/know-the-language-of-human-trafficking-a-glossary-of-sex-trafficking-terms/> (last visited Mar. 29, 2019).

⁸ Sarah Godoy, *We Cannot End Sex Trafficking Without Addressing Demand*, Forbes (Jan. 11, 2018), <https://www.forbes.com/sites/rebeccasadwick/2018/01/11/human-trafficking-demand/#55934e774b7c> (last visited Mar. 29, 2019).

stings,⁹ education programs,¹⁰ and public shaming have deterred Johns and reduced commercial sexual exploitation.¹¹ In April 2018, in an effort to reduce demand, federal law enforcement shut down Backpage.com, a sex marketplace website responsible for advertising sex-trafficking.¹²

Florida Law

Under Florida law, human trafficking is transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person.¹³ By including acts of “soliciting” and “obtaining,” this definition holds Johns accountable for human trafficking as well as pimps, madams, and bottoms.

A person may not engage in human trafficking, attempt to engage in human trafficking, or benefit financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for commercial sexual activity:

- By using coercion;¹⁴
- With a child younger than 18;¹⁵ or
- With a mentally defective or mentally incapacitated person.¹⁶
 - Mentally defective means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.¹⁷
 - Mentally incapacitated means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.¹⁸

Commercial sexual activity means any prostitution, lewdness, or assignation offense or attempt to commit such an offense, and includes a sexually explicit performance¹⁹ and the production of pornography.²⁰ Coercion includes:

- Using or threatening to use force against a person.
- Restraining, isolating, or confining a person without lawful authority and against his or her will, or threatening to do so.
- Using lending or other credit methods to establish a debt by a person when labor or services are pledged as a security for the debt, if the reasonably assessed value of the labor or is not applied toward the liquidation of the debt.
- Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, other immigration document, or government identification document.
- Causing or threatening to cause financial harm.
- Enticing or luring a person by fraud or deceit.
- Providing a Schedule I or II controlled substance²¹ to a person for the purpose of exploitation of that person.²²

⁹ A reverse sting is an operation using an undercover police officer posing as a prostitute to catch Johns soliciting prostitution. Demandforum.net, *Reverse Stings*, <http://www.demandforum.net/reverse-stings/> (last visited Mar. 29, 2019).

¹⁰ National Institute of Justice, *An Overview of John Schools in the United States* (Jan. 7, 2013), <http://www.demandforum.net/wp-content/uploads/2012/01/john-school-overview-from-national-assessment.pdf> (last visited Mar. 29, 2019).

¹¹ *Id.*

¹² Sarah N. Lynch and Lisa Lambert, *Sex ads website Backpage shut down by U.S. authorities*, Reuters (Apr. 6, 2018), <https://www.reuters.com/article/us-usa-backpage-justice/sex-ads-website-backpage-shut-down-by-u-s-authorities-idUSKCN1HD2QP> (last visited Mar. 29, 2019).

¹³ S. 787.06(2)(d), F.S.

¹⁴ S. 787.06(3)(b), F.S.

¹⁵ S. 787.06(3)(g), F.S.

¹⁶ *Id.*

¹⁷ S. 794.011(1)(a), F.S.

¹⁸ S. 794.011(1)(b), F.S.

¹⁹ A sexually explicit performance is an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest. S. 787.06(2)(i), F.S.

²⁰ S. 787.06(2)(b), F.S.

²¹ S. 893.03, F.S.

Coercive commercial sexual activity with an adult is a first degree felony human trafficking offense,²³ punishable by up to 30 years in prison and a \$10,000 fine.²⁴ Commercial sexual activity with a child or mentally defective or incapacitated person is a life felony human trafficking offense,²⁵ punishable by up to life in prison. Additionally, transferring or transporting a victim for commercial sexual activity is a first degree felony if the victim is a coerced adult,²⁶ and a first degree felony punishable by life²⁷ if the victim is a child.²⁸ A person convicted of human trafficking for commercial sexual activity must register as a sexual offender.²⁹

Prostitution Offenses

Prostitution is the giving or receiving of the body for hired sexual activity, unless between spouses.³⁰ Sexual activity is any of the following, unless done for a bona fide medical purpose:

- Oral, anal, or vaginal penetration by, or union with, the sexual organ of another;
- Anal or vaginal penetration of another by any other object; or
- The handling or fondling of the sexual organ of another for the purpose of masturbation.³¹

Lewdness is any indecent or obscene act, and assignation is the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such activity. A person 18 years of age or older may not commit, offer to commit, or engage in prostitution, lewdness, or assignation.³²

When done for the purpose of lewdness, assignation or prostitution, the following acts are criminalized:

- Owning, establishing, or maintaining a place, structure, building, or conveyance.
- Offering another.
- Receiving any person into a place, structure, building or conveyance, or permitting a person to remain.
- Directing, taking, or transporting a person to a place, structure, or building, or to another person.
- Residing in, entering, or remaining in, a place, structure, building, or conveyance.³³

Finally, a person may not solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.³⁴

For prostitution offenses other than solicitation:

- A first offense is a second degree misdemeanor, punishable by up to 60 days in jail and a \$500 fine.
- A second offense is a first degree misdemeanor, punishable by up to one year in jail and a \$1,000 fine.
- A third or subsequent offense is a third degree felony, punishable by up to five years in prison and a \$5,000 fine.³⁵

For solicitation of prostitution, lewdness, or assignation:

- A first offense is a first degree misdemeanor.
- A second offense is a third degree felony.

²² S. 787.06(2)(a), F.S.

²³ S. 787.06(3)(b), F.S.

²⁴ Ss. 775.082 and 775.083, F.S.

²⁵ S. 787.06(3)(g), F.S.

²⁶ S. 787.06(3)(f), F.S.

²⁷ Ss. 775.082 and 775.083, F.S.

²⁸ S. 787.06(3)(f), F.S.

²⁹ S. 943.0435, F.S.

³⁰ S. 796.07(1)(a), F.S.

³¹ S. 796.07(1)(d), F.S.

³² S. 796.07(2)(e), F.S.

³³ Ss. 796.07(2)(a)-(d) and (g), F.S.

³⁴ Ss. 775.082, 775.083, and 796.07(f), F.S.

³⁵ S. 796.07(e), F.S.

- A third or subsequent offense is a second degree felony, punishable by up to 15 years in prison and a \$10,000 fine.

A person convicted of solicitation of prostitution, lewdness, or assignation must:

- Perform 100 community service hours.³⁶
- Attend an education program about the negative effects of prostitution and human trafficking, if offered in the circuit where he or she was sentenced.
- Serve a minimum mandatory 10 days in jail, if convicted for a second or subsequent time.³⁷

Additionally, a court may impound the vehicle of a person convicted of solicitation of prostitution, lewdness, or assignation for up to 60 days if the person used a vehicle during the offense.³⁸

Other Sex Offenses

A John who solicits a child for commercial sexual activity and thereafter engages in sexual activity with the child may face criminal liability for various felony-level sex crimes, including lewd or lascivious battery,³⁹ lewd or lascivious molestation,⁴⁰ unlawful sexual activity with a minor,⁴¹ or capital sexual battery.⁴²

Adult Theaters

Human trafficking schemes sometimes operate out of strip clubs, where victims, including minors, are recruited as dancers, servers, or hostesses, but are expected to provide commercial sex to customers.⁴³ In 2014, police arrested four people for trafficking a 13-year-old girl at a Miami Beach strip club, where the girl was forced to perform fully nude and engage in commercial sexual activity.⁴⁴

Under Florida law, an adult theater is an enclosed building or space:

- Used for presenting films, live plays, dances, or other performances that are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specific sexual activities for observation by patrons; and
- Restricting or purporting to restrict admission only to adults.⁴⁵

Specific sexual activities include, among other things, exhibiting the:

- Human genitals or pubic region;
- Buttocks; and
- Female breasts below the top of the areola.⁴⁶

³⁶ S. 796.07(5)(b), F.S.

³⁷ S. 796.07(5)(c), F.S.

³⁸ S. 796.07(5)(d), F.S.

³⁹ Lewd and lascivious battery is a second degree felony involving sexual activity with a person less than 16 years old. S. 800.04(4)(a), F.S.

⁴⁰ Lewd or lascivious molestation involves touching the breasts, genitals, genital area, or buttocks of a person less than 16 years old, or enticing a person less than 16 years old to so touch the perpetrator. When committed by an adult, lewd or lascivious molestation is a life or first degree felony, depending on the victim's age. S. 800.04(5)(a), F.S.

⁴¹ A person who is 24 years of age or older commits unlawful sexual activity with a minor, a second degree felony, by engaging in sexual activity with a 16- or 17-year-old victim. S. 794.05, F.S.

⁴² Capital sexual battery is sexual battery on a victim less than 12 years old by a person 18 years or older, or attempted sexual battery on a person less than 12 years of age by a person 18 or older when the victim's sexual organs are injured. S. 794.011, F.S.

⁴³ National Human Trafficking Hotline, *Hostess/Strip Club-Based*, <https://humantraffickinghotline.org/sex-trafficking-venuesindustries/hostessstrip-club-based> (last visited Mar. 29, 2019).

⁴⁴ Hank Tester, *13-Year-Old Girl Describes Being Forced Into Prostitution in Miami Police Interview* (Feb. 19, 2014), <https://www.nbcmiami.com/news/local/13-Year-Old-Girl-Describes-Being-Forced-Into-Prostitution-in-Miami-Police-Interview-246267141.html> (last visited Mar. 29, 2019).

⁴⁵ S. 847.001(2)(b), F.S.

⁴⁶ S. 847.001(20)(d), F.S.

An adult theater must:

- Obtain proof of identify and age of each employee or independent contractor before he or she begins working;
- Verify the validity of the documentation with the issuer; and
- Keep a photocopy of an employee's or independent contractor's driver license or other government-issued identification card on record, along with documentation that the employer verified these items with the issuer, during the entire period of the person's employment or business relationship and three years thereafter.⁴⁷

The Department of Business and Professional Regulation (DBPR) may enter an adult theater during operating hours, unannounced and without prior notice, to inspect an adult theater and access the age verification documents kept on file.⁴⁸

Effect of Proposed Changes

CS/HB 219 requires a court to impose a:

- 10-day mandatory minimum term of incarceration for a person convicted of solicitation of prostitution, assignation, or lewdness.
- 30-day mandatory minimum term of incarceration for any person convicted of soliciting, inducing, enticing, or procuring a past or present victim of human trafficking, consecutive to the 10-day mandatory minimum imposed for solicitation.

To secure the 30-day mandatory minimum penalty under the bill, the prosecution must prove past or present human trafficking victimization, likely through the victim's testimony. There is no requirement that the offender knew that the person solicited was a victim of human trafficking. A John who solicits a child may face felony penalties for human trafficking or other sex offense charges under existing law.

The bill defines an adult theater to include any business that features a person who engages in specific sexual activities for observation by a patron, and which restricts or purports to restrict admission to only adults. This clarifies that the definition of adult theater encompasses a strip club and allows DBPR to inspect and enforce age verification requirements. The bill also penalizes a violation of the age verification and documentation requirements by an adult theater owner, operator, or manager as a first degree misdemeanor, punishable by up to one year in county jail and a \$1,000 fine.

The bill provides an effective date of July 1, 2019.

B. SECTION DIRECTORY:

Section 1: Amends s. 450.045, F.S., relating to proof of identity and age; posting of notices.

Section 2: Amends s. 796.07, F.S., relating to prohibiting prostitution and related acts.

Section 3: Amends s. 847.001, F.S., relating to definitions.

Section 4: Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁴⁷ S. 450.045(3), F.S.

⁴⁸ *Id.*

2. Expenditures:

The Criminal Justice Impact Conference considered this bill on February 27, 2019, and determined the bill is likely to have no impact on the number of prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may insignificantly increase the need for jail beds by requiring a mandatory minimum term of jail incarceration and creating a new misdemeanor offense.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill appears 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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 26, 2019, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Defined adult theater to include a strip club.
- Created a first degree misdemeanor offense for an adult theater's failure to verify, document, and maintain record of its employees' ages and identities.
- Imposed a 10-day mandatory minimum for all solicitation of prostitution convictions.
- Clarified the 30-day mandatory minimum for soliciting a victim of human trafficking applied to a past or present victim.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.