

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 523 Human Trafficking

SPONSOR(S): Judiciary Committee and Criminal Justice & Public Safety Subcommittee, Toledo and others

TIED BILLS: HB 525 **IDEN./SIM. BILLS:** CS/CS/SB 1826

FINAL HOUSE FLOOR ACTION: 114 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 523 passed the House on April 23, 2021, as CS/CS/SB 1826 as amended. The Senate concurred in the House amendment to the Senate bill and subsequently passed the bill as amended on April 27, 2021.

Human trafficking is modern day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person. Human trafficking is either a first degree felony or a life felony, and a person convicted of human trafficking must register as a sexual offender, but is not currently required to complete sex offender probation.

A human trafficking victim is authorized to petition a court for the expunction of his or her criminal history record resulting from an arrest or filing of charges for an offense committed or reported to have been committed while he or she was a victim of human trafficking, with the exception of certain offenses.

Florida protects communications between certain vulnerable persons, such as domestic violence or sexual assault victims, and victim advocates by specifying that such communications are privileged. Current law does not provide similar protections for a human trafficking victim.

The bill creates a human trafficking victim advocate-victim privilege which mirrors the privilege provided for sexual assault and domestic violence victim advocates. The bill authorizes a human trafficking victim to seek expunction in multiple jurisdictions at the same time for any number of qualifying offenses committed while he or she was a victim of human trafficking and prohibits a clerk of court from charging any fees for a human trafficking victim's petition for expunction.

The bill amends s. 787.06, F.S., by:

- Expanding the definitions of "human trafficking" and "obtain" to more closely align with federal law;
- Expanding the first degree felony and life felony offenses of human trafficking committed against a child under the age of 18 to also include an adult believed by the offender to be a child under 18 years of age; and
- Providing that the Legislature encourages state attorneys to adopt a pro-prosecution policy for acts of human trafficking.

Under the bill, a person convicted of sexually related acts of human trafficking must complete sex offender probation.

The Revenue Estimating Conference considered CS/HB 523 on March 26, 2021, and determined the bill will have an indeterminate, but likely insignificant, negative fiscal impact on the clerks of court revenues and the General Revenue Fund by requiring petitions for expunction by human trafficking victims to be processed without charge.

The bill was approved by the Governor on June 29, 2021, ch. 2021-189, L.O.F., and became effective on July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Human trafficking is modern day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person.¹ For purposes of human trafficking, “obtain” means, in relation to labor or services, to secure performance thereof.² A person may not knowingly, or in reckless disregard of the facts, engage in human trafficking, attempt to engage in human trafficking, or benefit financially by receiving anything of value from participating in a venture that has subjected a person to human trafficking for commercial sexual activity, labor, or services:

- By using coercion;³
- With or of a child younger than 18;⁴ or
- If for commercial sexual activity, with a mentally defective⁵ or mentally incapacitated⁶ person.⁷

Commercial sexual activity means any prostitution, lewdness, or assignation offense or attempt to commit such an offense, and includes a sexually explicit performance⁸ and the production of pornography.⁹

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 services 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 substance¹⁰ to a person for the purpose of exploiting that person.¹¹

Human trafficking for:

- Labor¹² or services¹³ of any child under the age of 18 is a first degree felony;¹⁴

¹ S. 787.06(2)(d), F.S.

² S. 787.06(2)(g), F.S.

³ S. 787.06(3)(b), F.S.

⁴ S. 787.06(3)(g), F.S.

⁵ 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. S. 794.011(1)(a), F.S.

⁶ 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. S. 794.011(1)(b), F.S.

⁷ S. 787.06(3)(g), F.S.

⁸ 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 sexual desires or appeal to the prurient interest. S. 787.06(2)(i), F.S.

⁹ S. 787.06(2)(b), F.S.

¹⁰ S. 893.03, F.S.

¹¹ S. 787.06(2)(a), F.S.

¹² “Labor” means work of economic or financial value. S. 787.06(2)(e), F.S.

¹³ “Services” means any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs. S. 787.06(2)(h), F.S.

¹⁴ 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.

- Labor or services of any child under the age of 18 who is an unauthorized alien, is a first degree felony;^{15, 16}
- Labor or services by transferring or transporting any child under the age of 18 from outside of Florida to within Florida, is a first degree felony;¹⁷
- Commercial sexual activity by transferring or transporting any child under the age of 18 from outside of Florida to within Florida, is a first degree felony;¹⁸ or
- Commercial sexual activity of any child under the age of 18 or any person who is mentally defective or mentally incapacitated, is a life felony.¹⁹

If during the commission of any first degree felony offense listed above the offender causes great bodily harm, permanent disability, or permanent disfigurement to another person, the offense is reclassified as a life felony.²⁰ An offender's ignorance of a victim's age, a victim's misrepresentation of his or her age, or an offender's bona fide belief of a victim's age cannot be raised as a defense in the prosecution for a human trafficking offense.²¹ A person convicted of human trafficking for commercial sexual activity must register as a sexual offender.²²

Sexual Offender Probation

Under s. 948.30, F.S., when a person is convicted of specified sexually-based offenses, a court must impose certain conditions as part of any term of supervision, such as a mandatory curfew, participation in sex offender treatment, prohibiting any contact with the victim, or restricting his or her use of the Internet.²³ While a person convicted of human trafficking must comply with the same registration requirements as a sexual offender, current law does not require such an offender to comply with sexual offender probation requirements.

Human Trafficking Victim Expunction

In 2013, the Legislature created a process authorizing a victim of human trafficking to petition a court for the expunction of a criminal history record resulting from his or her arrest or filing of charges, regardless of the disposition of the arrest or charges, for an offense committed or reported to have been committed while he or she was a victim of human trafficking. For purposes of human trafficking victim expunction, "victim of human trafficking" means a person subjected to coercion²⁴ for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.

To be eligible for expunction, the criminal offense must be related to a human trafficking scheme of which the person was a victim or the offense must have been committed at the direction of an operator of the scheme,²⁵ and must not be one of the following offenses:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;

¹⁵ "Unauthorized alien" means an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. § 1324a(h)(3). S. 787.06(2)(j), F.S.

¹⁶ S. 787.06(3)(c)1., F.S.

¹⁷ S. 787.06(3)(e)1., F.S.

¹⁸ S. 787.06(3)(f)1., F.S., provides that an offense committed under these circumstances is punishable by a term of imprisonment not exceeding life or as provided in ss. 775.082, 775.083, or 775.084, F.S.

¹⁹ A life felony is punishable by up to life imprisonment and a \$15,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

²⁰ S. 787.06(8)(b), F.S.

²¹ S. 787.06(9), F.S.

²² S. 943.0435, F.S.

²³ S. 948.30(1)(b), F.S. The specified offenses include sexual battery (ch. 794, F.S.), lewd or lascivious offenses (s. 800.04, F.S.), promoting sexual performance by a child (s. 827.071, F.S.), traveling to meet a minor for the purpose of engaging in illegal sexual activity (s. 874.0135, F.S.) and selling or buying minors for child pornography (s. 847.0145, F.S.).

²⁴ As defined in s. 787.06, F.S.

²⁵ S. 943.0583, F.S.

- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;
- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery; or
- Aggravated stalking.

The court with original jurisdiction over the crime the human trafficking victim seeks to expunge is the court designated to hear the victim's petition.²⁶ A petition must be initiated by the petitioner with due diligence after he or she is no longer a victim of human trafficking or has sought human trafficking services.²⁷ The petition must be accompanied by the following:

- A sworn statement attesting that the petitioner is eligible for an expunction to the best of his or her knowledge and does not have other petitions to expunge or seal pending before any court; and
- Official documentation of the petitioner's status as a human trafficking victim, if any exists.²⁸

When a criminal history record is ordered to be expunged, the record must be physically destroyed by any criminal justice agency possessing such record, except that any criminal history record in the custody of the Florida Department of Law Enforcement (FDLE) must be retained.²⁹ A human trafficking victim may lawfully deny or fail to acknowledge any expunged record unless he or she is applying for a job with a criminal justice agency or is a defendant in a subsequent criminal prosecution.³⁰

Florida's clerks of court are authorized by statute to charge numerous service charges for performing specified duties, including \$42 for sealing any court file or expungement of any record.³¹

Current law also provides a public record exemption³² for criminal intelligence³³ and criminal investigative information³⁴ including:³⁵

- Any information that reveals the identity of a person under the age of 18 who is the victim of human trafficking for labor or services;³⁶
- Any information that may reveal the identity of a person who is the victim of human trafficking for commercial sexual activity;³⁷ and
- A photograph, videotape, or image of any part of the body of a victim of human trafficking involving commercial sexual activity.³⁸

Privileged Communications

²⁶ S. 943.0583(2), F.S.

²⁷ S. 943.0583(4), F.S.

²⁸ S. 943.0583(6), F.S.

²⁹ S. 943.045(16), F.S.

³⁰ S. 943.0583(8)(b), F.S.

³¹ S. 28.24(25), F.S. From such fee the clerk remits \$4.50 to the General Revenue Fund.

³² S. 119.071(2)(h), F.S.

³³ The term "criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. S. 119.011(3)(a), F.S.

³⁴ The term "criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. S. 119.011(3)(b), F.S.

³⁵ Ch. 2015-146 Laws of Fla.

³⁶ See s. 787.06(3)(a), F.S.

³⁷ See s. 787.06(3)(b), (d), (f), and (g), F.S.

³⁸ *Id.*

Section 90.5035, F.S., provides that communications between a sexual assault counselor³⁹ or trained volunteer⁴⁰ and a victim⁴¹ are confidential when not intended to be disclosed to a third party, other than persons:

- Present with the victim to assist in the consultation, examination, or interview;
- Necessary for the transmission of the communication; or
- Whom disclosure is reasonably necessary to accomplish the purpose for which the victim is consulting with the counselor or trained volunteer.

A victim may refuse to disclose and prevent another person from disclosing a confidential communication made to a sexual assault counselor or trained volunteer or any record related to such communication, and such communication or record may only be disclosed with the victim's prior written consent. The privilege includes any advice given by the sexual assault counselor or trained volunteer in the course of that relationship, and the privilege may be claimed by the:

- Victim or his or her attorney;
- Victim's guardian or conservator;
- Personal representative of a deceased victim;
- Sexual assault counselor or trained volunteer, but only on behalf of the victim, and the authority to do so is presumed in the absence of evidence to the contrary.^{42, 43}

Effect of the Bill

Human Trafficking Victim Advocate-Victim Privilege

The bill creates a human trafficking victim advocate-victim privilege by mirroring the privilege provided for sexual assault counselors and domestic violence victim advocates. The bill provides that communication between a human trafficking victim advocate or trained volunteer and a human trafficking victim is confidential when such communication is not intended to be disclosed to a third party, other than a person:

- Present during the communication for the purpose of furthering the interest of the human trafficking victim;
- Necessary for the transmission of the communication; or
- To whom disclosure of the communication is reasonably necessary to accomplish the purpose of the human trafficking victim's communication.

The bill provides the following definitions relating to the human trafficking victim advocate-victim privilege:

- "Anti-human trafficking organization" means a registered agency that offers assistance to victims of human trafficking.
- "Human trafficking victim advocate" means an employee of an anti-human trafficking organization whose primary purpose is to provide advice, counseling, or services to human trafficking victims and who has completed 24 hours of human trafficking training delivered by the Office of the Attorney General (OAG), the Bureau of Criminal Justice Programs and Victim Services, and the Florida Crime Prevention Training Institute, and within 3 years after completing such initial training, completes an 8-hour Human Trafficking Update course.
- "Trained volunteer" means a person who volunteers with an anti-human trafficking organization and who has completed 24 hours of human trafficking training delivered by the OAG, the

³⁹ "Sexual assault counselor" means any employee of a rape crisis center (center) whose primary purpose is to render advice, counseling, or assistance to sexual assault or sexual battery victims. S. 90.5035(1)(b), F.S.

⁴⁰ "Trained volunteer" means a person who volunteers at a center, has completed 30 hours of training in assisting sexual violence victims and related topics, is supervised by center staff, and is included on a list of volunteers maintained by the center. S. 90.5035(1)(c), F.S.

⁴¹ "Victim" means a person who consults a sexual assault counselor or a trained volunteer for advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by an alleged, attempted, or completed sexual assault or sexual battery. S. 90.5035(1)(d), F.S.

⁴² S. 92.55, F.S.

⁴³ S. 90.5036, F.S., provides a similar domestic violence advocate-victim privilege.

Bureau of Criminal Justice Programs and Victim Services, and the Florida Crime Prevention Training Institute, and within 3 years after completing such initial training, completes an 8-hour Human Trafficking Update course.

- "Human trafficking victim" means a person who consults a human trafficking victim advocate or trained volunteer seeking advice, counseling, or services related to an experience of human trafficking exploitation.

Under the bill, a human trafficking victim is authorized to refuse to disclose, and to prevent any other person from disclosing, a record created or confidential communication made during his or her communication with a human trafficking victim advocate or trained volunteer for the purpose of receiving advice, counseling, or other assistance. Such record or communication may be disclosed only with the human trafficking victim's prior written consent. The human trafficking victim advocate-privilege may be claimed by the:

- Human trafficking victim or the human trafficking victim's attorney on his or her behalf.
- Guardian or conservator of the human trafficking victim.
- Personal representative of a deceased human trafficking victim.
- Human trafficking victim advocate or trained volunteer, but only on behalf of the human trafficking victim.

Human Trafficking Victim Expunction

The bill clarifies that a human trafficking victim is authorized to seek expunction in multiple judicial circuits for any number of qualifying offenses committed while he or she was a victim of human trafficking and prohibits the clerk of court from charging any fees for a human trafficking victim's petition for expunction.

Human Trafficking Offender Probation

The bill requires a person to comply with the requirements of sexual offender probation if he or she is convicted, after the effective date of the bill, of subjecting a person to human trafficking:

- Using coercion for commercial sexual activity of an adult;
- Using coercion for commercial sexual activity of an adult who is an unauthorized alien;
- For commercial sexual activity by transferring or transporting a minor from outside this state to within the state; or
- For commercial sexual activity in which any minor or any person who is mentally defective or mentally incapacitated is involved.

Human Trafficking Definitions and Offenses

To more closely align with federal human trafficking law,⁴⁴ the bill expands the definition of:

- "Human trafficking" to also include *purchasing, patronizing, or procuring* another person for the purpose of exploiting that person; and
- "Obtain" to include in relation to labor, *commercial sexual activity*, or services, to *receive, take possession of, or take custody of another person* or secure performance of that person.

The bill also expands the first degree felony and life felony offenses of human trafficking committed against a child under the age of 18 to also include an adult believed by the offender to be a child under the age of 18. As such, the bill may assist law enforcement in undercover sting operations designed to thwart human trafficking operations.

Pro-Prosecution Policy

The bill provides that the Legislature encourages state attorneys to adopt a pro-prosecution policy for acts of human trafficking.

⁴⁴ See 22 U.S.C. § 7102.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

The bill may have a negative fiscal impact on the Department of Corrections, by requiring a person convicted of human trafficking to complete sex offender probation, which may require a more intensive form of supervision than required under current law.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

To the extent clerks of court will have to process human trafficking victim expungement petitions without charge, the bill will likely have an insignificant negative impact on clerks.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a positive fiscal impact on victims of human trafficking seeking expungement in accordance with s. 943.0583, F.S., who will no longer be charged a filing fee, service charge, copy fee, or any other charge for a human trafficking expunction petition.

The bill requires a person defined as a human trafficking victim advocate or a trained volunteer under the newly created s. 90.5037, F.S., to complete human trafficking training delivered by the OAG, the Bureau of Criminal Justice Programs and Victim Services, and the Florida Crime Prevention Training Institute. According to the OAG, the cost to attend the 24-hour course will be \$299 per person, and the cost to attend the 8-hour update course will be \$160 per person.

D. FISCAL COMMENTS:

The Revenue Estimating Conference considered the bill on March 26, 2021, and determined the bill will have an indeterminate, but likely insignificant, negative fiscal impact on the clerks of court revenues and the General Revenue Fund by requiring that petitions for expunction by human trafficking victims be processed without charge.

According to FDLE, since 2018, 63 individuals have received human trafficking victim expungements in Florida. While it cannot be known how many individuals will submit human trafficking victim expunction petitions under the changes made by this bill, due to the low volume of these anticipated expungement petitions, the bill is likely to have an insignificant negative fiscal impact on state and local government.