

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 Criminal Justice

BILL: SB 760

INTRODUCER: Senator Berman

SUBJECT: Human Trafficking

DATE: January 10, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 760 amends the human trafficking statute, s. 787.06, F.S., to expand the term “coercion.” Currently, s. 787.06, F.S., delineates the offenses of human trafficking between whether the victim is a child under 18 years old, an adult who is believed to be a child under 18 years old, or an adult. The human trafficking offenses against adult victims require the element of “coercion.” This bill amends s. 787.06, F.S., to expand the term “coercion,” in multiple ways.

Additionally, this bill expands the crime of human trafficking to make it a second degree felony if a person engages in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for the:

- Labor or services of an adult; or
- Commercial sexual activity of any adult.

The bill amends the prostitution statute to add to the list of prohibited acts. Specifically, the bill makes it unlawful for a person to *facilitate or enable the receiving* of any person into any place, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or to *facilitate, enable, or permit* any person to remain there for such purpose.

This bill also increases the penalties of specified crimes relating to prostitution.

Additionally, this bill amends ss. 456.074, 480.041, and 943.0433, F.S., to make conforming cross-references.

This bill may have a positive indeterminate prison bed impact on the Department of Corrections. See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2022.

II. Present Situation:

Human Trafficking

Human trafficking is a form of modern-day slavery.¹ Human trafficking victims are young children, teenagers, and adults who are trafficked domestically within the borders of the United States or smuggled across international borders worldwide.² Many human trafficking victims are induced with false promises of financial or emotional security, but are forced or coerced into commercial sex, domestic servitude, or other types of forced labor.³ Any minor who is younger than 18 years old and who is induced to perform a commercial sex act is a human trafficking victim even if there is no force, fraud or coercion.⁴ Increasingly, criminal organizations, such as gangs, are enticing local school children into commercial sexual exploitation or trafficking.⁵ The average ages of youth who are trafficked are 11-13 years old.⁶

The U.S. Department of Justice reports that every two minutes a child is trafficked for the purpose of sexual exploitation in the United States.⁷ Approximately 24.9 million people are human trafficking victims in the world.⁸ There are approximately 2.5 million victims of human trafficking in the United States.⁹

Congress passed the Victims of Trafficking and Violence Protection Act (Act) of 2000 to combat human trafficking by establishing several methods of prosecuting traffickers, preventing trafficking, and protecting victims.¹⁰ The Act contains penalties and mandates restitution for victims of human trafficking.¹¹

Human Trafficking in Florida

Florida is ranked the third highest state of reported human trafficking cases in the United States.¹² Florida law defines “human trafficking” as transporting, soliciting, recruiting,

¹ Section 787.06(1)(a), F.S.

² *Id.*

³ The Department of Education, *Healthy Schools – Human Trafficking*, available at <http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited January 3, 2022).

⁴ *Id.*

⁵ *Id.*

⁶ The Department of Education, *Presentation to the State Board of Education, Child Trafficking Prevention Education*, p. 3, September 20, 2019, available at <http://www.fldoe.org/core/fileparse.php/5575/urlt/ChildTraffickingPres.pdf> (last visited January 3, 2022).

⁷ The Department of Education, *Healthy Schools – Human Trafficking*, available at <http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited January 3, 2022).

⁸ National Human Trafficking Hotline, *What is Human Trafficking?* available at <https://humantraffickinghotline.org/what-human-trafficking> (last visited January 3, 2022).

⁹ The Department of Education, *Healthy Schools – Human Trafficking*, available at <http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited January 3, 2022).

¹⁰ 22 U.S.C. s. 7101.

¹¹ *Id.*

¹² The Department of Education, *Presentation to the State Board of Education, Child Trafficking Prevention Education*, p. 3, September 20, 2019, available at <http://www.fldoe.org/core/fileparse.php/5575/urlt/ChildTraffickingPres.pdf> (last visited January 3, 2022).

harboring, providing, enticing, maintaining,¹³ purchasing, patronizing, procuring, or obtaining¹⁴ another person for the purpose of exploitation of that person.¹⁵

Any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or 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:

- For labor¹⁶ or services¹⁷ of any child under the age of 18 or an adult believed by the person to be a child younger than the age of 18 commits a first degree felony;¹⁸
- Using coercion for labor or services of an adult commits a first degree felony;¹⁹
- Using coercion for commercial sexual activity²⁰ of an adult commits a first degree felony;²¹
- For labor or services of any child under the age of 18 or an adult believed by the person to be a child younger than the age of 18 who is an unauthorized alien commits a first degree felony;^{22, 23}
- Using coercion for labor or services of an adult who is an unauthorized alien commits a first degree felony;²⁴
- Using coercion for commercial sexual activity of an adult who is an unauthorized alien commits a first degree felony;²⁵
- For labor or services who does so by the transfer or transport of any child under the age of 18 or an adult believed by the person to be a child younger than the age of 18 from outside the state of Florida to within the state of Florida commits a first degree felony;²⁶
- Using coercion for labor or services who does so by the transfer or transport of an adult from outside the state of Florida to within the state of Florida commits a first degree felony;²⁷
- For commercial sexual activity who does so by the transfer or transport of any child under the age of 18 or an adult believed by the person to be a child younger than the age of 18

¹³ Section 787.06(2)(f), F.S., provides “maintain” means, in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type service. Section 787.06(2)(h), F.S., defines “services” as any act committed at the behest of, under the supervision of, or for the benefit of another, including forced marriage, servitude, or the removal of organs.

¹⁴ Section 787.06(2)(g), F.S., provides “obtain” means, in relation to labor or services, to secure performance thereof.

¹⁵ Section 787.06(2)(d), F.S.

¹⁶ Section 787.06(2)(e), F.S., provides “labor” means work of economic or financial value.

¹⁷ Section 787.06(2)(h), F.S., provides “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.

¹⁸ Section 787.06(3)(a)1., F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S. However, when specifically provided by statute, a first degree felony may be punished by imprisonment for a terms of years not exceeding life imprisonment. Section 775.082, F.S.

¹⁹ Section 787.06(3)(a)2., F.S.

²⁰ Section 787.06(2)(b), F.S., defines “commercial sexual activity” as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines “sexual explicit performance” as 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.

²¹ Section 787.06(3)(b), F.S.

²² Section 787.06(2)(j), F.S., defines “unauthorized alien” as an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. s. 1324a(h)(3).

²³ Section 787.06(3)(c)1., F.S.

²⁴ Section 787.06(3)(c)2., F.S.

²⁵ Section 787.06(3)(d), F.S.

²⁶ Section 787.06(3)(e)1., F.S.

²⁷ Section 787.06(3)(e)2., F.S.

from outside of the state of Florida to within the state of Florida commits a first degree felony punishable by imprisonment for a term of years not exceeding life;²⁸

- Using coercion for commercial sexual activity who does so by the transfer or transport of an adult from outside the state of Florida to within the state of Florida commits a first degree felony;²⁹ or
- For commercial sexual activity in which any child under the age of 18 or an adult believed by the person to be a child younger than 18, or in which any person who is mentally defective³⁰ or mentally incapacitated³¹ is involved commits a life felony.³²

“Coercion,” is an element in proving all of the above listed acts of human trafficking of adult victims. Section 787.06(2)(a), F.S., provides that coercion means:

- Using or threatening to use physical force against any person;
- Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
- Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
- Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
- Causing or threatening to cause financial harm to any person;
- Enticing or luring any person by fraud or deceit; or
- Providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03, F.S., to any person for the purpose of exploitation of that person.

It is a life felony for any parent, legal guardian, or other person having custody or control of a minor to sell or otherwise transfer custody or control of such minor, or make such an offer, with knowledge or reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will be subject to human trafficking.³³

Additionally, any person who permanently brands, or directs such branding of a victim for purposes of human trafficking commits a second degree felony.³⁴

²⁸ Section 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.

²⁹ Section 787.06(3)(f)2., F.S.

³⁰ Section 794.011(1)(b), F.S., defines “mentally defective” as a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

³¹ Section 794.011(1)(c), F.S., defines “mentally incapacitated” as 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.

³² Section 787.06(3)(g), F.S. A life felony is generally punishable by life imprisonment or by a term of imprisonment not exceeding 40 years. Section 775.082, F.S.

³³ Section 787.06(4)(a), F.S.

³⁴ Section 787.06(4)(b), F.S. A second degree felony is punishable by up to 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

The above-mentioned first degree felonies are reclassified as a life felony, and a second degree felony is reclassified to a first degree felony, if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of the offense.³⁵ Ignorance of the victim's age, the victim's misrepresentation of his or her age, or a bona fide belief of the victim's age cannot be raised as a defense by a defendant.³⁶

Prostitution and Other Prohibited Acts

Prostitution is prohibited throughout the United States, except in Nevada. While laws relating to prostitution vary across jurisdictions, federal criminal laws address prostitution in the context of human trafficking.³⁷

Prostitution rings are often hidden operations. As a result, police officers go undercover in an effort to conduct prostitution stings. In 2021, officers arrested more than 100 people in an undercover sting targeting human trafficking in central Florida. Thirty-eight people were arrested for prostitution.³⁸

Another tool commonly employed by those engaging in prostitution is the Internet, which is utilized similarly in human trafficking operations. Thus, law enforcement agencies use the Internet to attempt to crack down on prostitution activity. In January 2019, four people were arrested in Tallahassee in conjunction with an undercover prostitution operation that was aimed at reducing street level prostitution in the capital city. After an undercover police officer contacted the suspects through an online advertisement that had indicators of being associated with prostitution activity and met with each suspect individually at an undisclosed hotel, the officer placed each of them under arrest.³⁹

Florida Law defines prostitution as the giving or receiving of the body for sexual activity for hire.⁴⁰ Section 796.07(2)(f), F.S., prohibits the solicitation, inducement, enticement, or procurement of another to commit prostitution, lewdness, or assignation.⁴¹ Those terms are defined in the following ways:

- “Lewdness” means any indecent or obscene act; and
- “Assignation” means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.⁴²

³⁵ Section 787.06(8), F.S.

³⁶ Section 787.06(9), F.S.

³⁷ Justia, *Prostitution*, available at <https://www.justia.com/criminal/offenses/sex-crimes/prostitution/> (last visited January 4, 2022).

³⁸ Orlando Sentinel, *102 people arrested in Central Florida county during human trafficking sting*, (October 28, 2021) available at <https://www.orlandosentinel.com/news/florida/os-ne-102-people-arrested-in-florida-county-during-human-trafficking-sting-20211028-nisvj3byrrfhxj47bmoi3zjjn4-story.html> (last visited January 4, 2022).

³⁹ WTXL, *Four arrested in undercover prostitution sting in Tallahassee*, (January 14, 2019) available at http://www.wtxl.com/news/four-arrested-in-undercover-prostitution-sting-in-tallahassee/article_47c5602a-182e-11e9-aa98-0bf1f95703cb.html (last visited January 4, 2022).

⁴⁰ This definition excludes sexual activity between spouses. Section 796.07(1)(a), F.S.

⁴¹ Section 796.07(2)(f), F.S.

⁴² Section 796.07(1)(b) and (c), F.S.

A person who violates s. 796.07(2)(f), F.S., commits:

- A misdemeanor of the first degree⁴³ for a first violation;
- A felony of the third degree⁴⁴ for a second violation; and
- A felony of the second degree⁴⁵ for a third or subsequent violation.⁴⁶

Additionally, Florida law provides that it is a second degree misdemeanor:⁴⁷

- To own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution;
- To offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act.
- To receive, or to offer to agree to receive, any person into any place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose;
- To direct, take, or transport, or to offer or agree to direct, take, or transport, any person to any place, structure, or building, or to any other person, with knowledge or reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation;
- For a person 18 years of age or older to offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation;
- To reside in, enter, or remain in, any place, structure, or building, or to enter or remain in any conveyance, for the purpose of prostitution, lewdness, or assignation;
- To aid, abet, or participate in any of the acts or things listed above; or
- To purchase the services of any person engaged in prostitution.⁴⁸

The above listed second degree misdemeanors are reclassified to a first degree misdemeanor for a second violation, and a third degree felony for any third or subsequent violation.⁴⁹

III. Effect of Proposed Changes:

Section 787.06, F.S., penalizes the illegal conduct of the perpetrators of human trafficking. Currently, s. 787.06, F.S., delineates the offenses of human trafficking between whether the victim is:

- A child under 18 years old;
- An adult who is believed to be a child under 18 years old; or
- An adult.

⁴³ A first degree misdemeanor is punishable by up to a year in county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

⁴⁴ A third degree felony is punishable by up to five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

⁴⁵ A second degree felony is punishable by up to 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

⁴⁶ Section 796.07(5)(a)1.-3., F.S.

⁴⁷ A second degree misdemeanor is punishable by up to 60 days in county jail and a fine not exceeding \$500. Sections 775.082, and 775.083, F.S.

⁴⁸ Section 796.07(2), F.S.

⁴⁹ Section 796.07(4), F.S.

The human trafficking offenses against adult victims require the element of “coercion.” This bill amends s. 787.06, F.S., to expand the term “coercion,” in three ways. First, the bill removes the phrase “coercion means” and replaces it with the phrase “coercion includes but is not limited to.” This expands the term coercion to include behaviors not specified in s. 787.06(2)(a), F.S. Next, the bill expands the term “coercion” by including the “withholding earned income from a person” as a behavior that would constitute coercion. Lastly, the current definition of coercion specifies that providing a controlled substance outlined in *Schedule I or Schedule II* of s. 893.03, F.S., to any person for exploitation of that person constitutes coercion. The bill expands this behavior to include the providing of *any* controlled substance in s. 893.03, F.S., *alcohol or any other drug* for the purpose of exploitation of that person.

Currently, a person commits the first degree felony if he or she engages in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for:

- Using coercion for labor or services of an adult;⁵⁰ or
- Using coercion for commercial sexual activity of any adult.⁵¹

This bill further expands the crime of human trafficking to make it a second degree felony if a person engages in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for the:

- Labor or services of an adult; or
- Commercial sexual activity of any adult.

Section 796.07(2)(c), F.S., currently provides that is unlawful to receive, or to offer or agree to receive, any person into any place, structure, building, or conveyance for the purpose of prostitution, lewdness or assignation, or to permit any person to remain there for such purpose. The bill amends this paragraph to include the *facilitating or enabling the receiving* of any person into any place, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or the *facilitating, enabling, or permitting* any person to remain there for such purpose.

This bill increases the penalty from a second degree misdemeanor to a second degree felony for a first offense of owning, establishing, maintaining, or operating any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution.

The bill also increases the penalty from a second degree misdemeanor to a second degree felony to direct, take, or transport, any person to any place, structure, or building, or to any other person, with knowledge or reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation. A second or subsequent violation of this crime is a first degree felony. While the bill increases the penalty for this offense, the bill does not remove the current penalty for this crime, resulting in two penalties for the same conduct. See Section VI. Technical Deficiencies.

Additionally, this bill amends ss. 456.074, 480.041, and 943.0433, F.S., to make conforming cross-references.

⁵⁰ Section 787.06(3)(a)2., F.S.

⁵¹ Section 787.06(3)(b), F.S.

This bill is effective October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of prison bed impact, if any, of legislation, has not yet reviewed the bill. This bill creates two new felony human trafficking offenses in s. 787.06, F.S., and increases the penalties in the prostitution statute for ss. 796.07(2)(a), and 796.07(2)(d), F.S. Thus, the bill may have a positive indeterminate prison bed impact (unquantifiable increase in prison beds) on the Department of Corrections.

VI. Technical Deficiencies:

The bill provides an increased penalty for a violation of s. 796.07(2)(d), F.S., but fails to exempt this paragraph from the other penalties provided in s. 796.07(4), F.S. Because of this technical

deficiency, the bill provides that the offense listed in paragraph (2)(d) is punishable both as a second degree misdemeanor and a second degree felony. If it is the intent of the bill to increase the penalty for this offense, removal of the current penalty is recommended.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 787.06, 796.07, 456.074, 480.041, and 943.0433.

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.