

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/HB 7045      PCB JDC 23-02      Human Trafficking, Prostitution, and Lewdness

**SPONSOR(S):** Commerce Committee and Judiciary Committee, Overdorf and others

**TIED BILLS:**            **IDEN./SIM. BILLS:**    SB 7064

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**FINAL HOUSE FLOOR ACTION:**    116 Y's            0 N's            **GOVERNOR'S ACTION:**    Approved

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### SUMMARY ANALYSIS

CS/HB 7045 passed the House on May 3, 2023, as SB 7064 as amended. The Senate concurred in the House amendment to the Senate bill and subsequently passed the bill as amended on May 3, 2023.

Human trafficking is a form of modern-day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining of another person for the purpose of exploiting that person. A victim of human trafficking has a federal cause of action under 18 U.S.C. § 1595, which may be brought against any perpetrator of trafficking or any person who knowingly benefits from the trafficking of a victim. Victims of human trafficking also have a state civil cause of action under ch. 772, F.S., related to civil remedies for criminal practices. Alternatively, under s. 796.09, F.S., a person has a cause of action against a person who coerced that person into prostitution; a person who coerces that person to remain in prostitution; or a person who uses coercion to collect or receive any part of that person's earnings derived from prostitution.

The bill creates s. 787.061, F.S., to provide a civil cause of action for victims of human trafficking against an adult theater or an owner, operator, or manager of such theater, that knowingly allows a victim of human trafficking to work, perform, or dance at the adult theater. The bill amends s. 95.11, F.S., to specify the statute of limitations for bringing an action under the bill's civil remedy provision.

The bill amends s. 787.06, F.S. to require that after satisfying any liens, the proceeds from any real or personal property seized and forfeited as provided by the Florida Contraband Forfeiture Act, must first be allocated to pay any order of restitution of a human trafficking victim in the criminal case for which the owner was convicted. The bill also amends s. 450.045, F.S., to increase the offense for failure of an owner, operator, or manager of an adult theater to comply with the proof of age and identity verification requirements from a first-degree misdemeanor to a third-degree felony; and removes the language indicating that the owner, operator, or manager must violate s. 450.045, F.S. knowingly. The bill amends s. 796.07, F.S., to require an offender convicted for soliciting another person to commit prostitution to pay for and attend an educational program relating to human trafficking and commercial sex, if one is available, in addition to any other penalty imposed. The bill also:

- Amends s. 943.17297, F.S., to require that each certified law enforcement officer successfully complete four hours of training in identifying and investigating human trafficking as part of the basic recruit training or any additional required training.
- Creates s. 1004.343, F.S., to establish the Statewide Data Repository for Anonymous Human Trafficking Data within the University of South Florida's Trafficking in Persons – Risk to Resilience Lab.

The bill may have an indeterminate positive impact on jail and prison beds by increasing the offense level for failure of an adult theater owner, operator, or manager to comply with proof of age and identity requirements to a third-degree felony, which may result in more jail and prison admissions. The bill may also have an indeterminate, but likely insignificant, fiscal impact on state expenditures, and an indeterminate negative fiscal impact on state and local government revenue.

The bill was approved by the Governor on May 16, 2023, ch. 2023-86, L.O.F., and will become effective on July 1, 2023.

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

**STORAGE NAME:** h7045z.DOCX

**DATE:** 5/17/2023

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### Background

#### Human Trafficking

Human trafficking is a form of modern-day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining of another person for the purpose of exploiting that person.<sup>1</sup> It is the intent of the Legislature that the perpetrators of human trafficking be penalized for their illegal conduct and that the victims of trafficking be protected and assisted by this state and its agencies.<sup>2</sup>

A person who knowingly, or in reckless disregard of the facts, engages in or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participating in a venture that has subjected a person to human trafficking for commercial sexual activity, labor,<sup>3</sup> or services:<sup>4</sup>

- By coercing an adult, commits a first-degree felony.<sup>5, 6</sup>
- With or of a child younger than 18 years of age or a person believed to be a child younger than 18, commits a first-degree felony.<sup>7</sup>
- For commercial sexual activity with a mentally defective<sup>8</sup> or mentally incapacitated<sup>9</sup> person, commits a life felony.<sup>10</sup>

“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 substance<sup>11</sup> to a person for the purpose of exploiting that person.<sup>12</sup>

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<sup>1</sup> S. 787.06(2)(d), F.S.

<sup>2</sup> S. 787.06(1)(d), F.S.

<sup>3</sup> “Labor” means work of economic or financial value. S. 787.06(2)(e), F.S.

<sup>4</sup> “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.

<sup>5</sup> S. 787.06(3)(a)2., (b), (c)2., (d), (e)2., and (f)2., F.S.

<sup>6</sup> 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.; or see s. 775.084, F.S. (applies to violent career criminals, habitual felony offenders, habitual violent felony offenders, and three-time violent felony offenders).

<sup>7</sup> S. 787.06(3)(a)1., (c)1., (e)1., and (f)1., F.S.

<sup>8</sup> “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)(c), F.S.

<sup>9</sup> “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)(d), F.S.

<sup>10</sup> S. 787.06(3)(g), F.S. A life felony is punishable by up to life imprisonment and a \$15,000 fine. Ss. 775.082 and 775.083; see 775.084, F.S. (applies to violent career criminals, habitual felony offenders, habitual violent felony offenders, and three-time violent felony offenders).

<sup>11</sup> S. 893.03, F.S.

<sup>12</sup> S. 787.06(2)(a), F.S.

“Commercial sexual activity” means any prostitution, lewdness, or assignation offense or attempt to commit such an offense, and includes a sexually explicit performance<sup>13</sup> and the production of pornography.<sup>14</sup>

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.<sup>15</sup> Any person who for the purpose of committing or facilitating an offense of human trafficking, permanently brands,<sup>16</sup> or directs to be branded, a victim of human trafficking, commits a second-degree felony.<sup>17</sup>

Additionally, a parent, legal guardian, or a person with custody over a minor, who sells or transfers custody or control of the minor, or offers to sell or transfer custody or control of the minor, with knowledge or in reckless disregard of the fact that the child will be subject to human trafficking after the sale or transfer, commits a life felony.<sup>18</sup>

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.<sup>19</sup> A person convicted of human trafficking for commercial sexual activity must register as a sexual offender.<sup>20</sup>

Furthermore, any real or personal property that was used, attempted to be used, or intended to be used in the commission of a human trafficking offense may be seized and shall be forfeited subject to the Provisions of the Florida Contraband Forfeiture Act.<sup>21</sup>

#### *Federal Trafficking Victim Protections Act*

Under the Federal Trafficking Victim Protections Act, “severe forms of trafficking in persons” means:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which a person induced to perform such an act has not attained 18 years of age; or
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>22</sup>

#### Florida Contraband Forfeiture Act

##### *Seizure*

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<sup>13</sup> 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.

<sup>14</sup> S. 787.06(2)(b), F.S.

<sup>15</sup> S. 787.06(8)(b), F.S.

<sup>16</sup> “Permanently branded” means a mark on the individual’s body that, if it can be removed or repaired at all, can only be removed or repaired by surgical means, laser treatment, or other medical procedure. S. 787.06(4)(b), F.S.

<sup>17</sup> S. 787.06(4)(b), F.S. A second-degree felony is punishable by a term of imprisonment not exceeding 15 years and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.; see s. 775.084, F.S. (applies to violent career criminals, habitual felony offenders, habitual violent felony offenders, and three-time violent felony offenders).

<sup>18</sup> S. 787.06(4)(a), F.S.

<sup>19</sup> S. 787.06(9), F.S.

<sup>20</sup> S. 943.0435, F.S.

<sup>21</sup> S. 787.06(7), F.S.

<sup>22</sup> 22 U.S.C. § 7102(11).

The Florida Contraband Forfeiture Act (FCFA)<sup>23</sup> authorizes a law enforcement agency to seize a contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of the FCFA, or in, upon, or by means of which any violation of the FCFA has taken or is taking place.<sup>24</sup> A “contraband article” includes:

- Personal property that was used or attempted to be used as an instrumentality in, or to aid or abet the commission of, any felony, or which is acquired by proceeds obtained from a violation of the Act; and
- Real property that was used or attempted to be used as an instrumentality in, or to aid or abet the commission of, any felony, or which is acquired by proceeds from a violation of the Act.

Property may only be seized if the owner of the property is arrested for a criminal offense that forms the basis for determining that the property is a contraband article, or if one of the following circumstances apply:

- The owner of the property cannot be identified after a diligent search, or the person in possession of the property denies ownership and the owner of the property cannot be identified by means that are available to the employee or agent of the seizing agency at the time of the seizure;
- The owner of the property is a fugitive from justice or is deceased;
- An individual who does not own the property is arrested for a criminal offense that forms the basis for determining that the property is a contraband article and the owner of the property had actual knowledge of the criminal activity;
- The owner of the property agrees to be a confidential informant; or
- The property is a monetary instrument.<sup>25</sup>

If a law enforcement agency seizes property, the agency must apply to a court for an order determining whether probable cause exists for the seizure of the property within 10 days of such seizure.<sup>26</sup> If a court finds that probable cause exists for the seizure and determines that the owner was arrested for a qualifying offense or an arrest exception applies, the law enforcement agency may initiate a forfeiture proceeding.<sup>27</sup>

### *Forfeiture*

A seizing law enforcement agency must promptly initiate forfeiture proceedings by filing a complaint in the circuit court in the jurisdiction where the seizure or offense occurred.<sup>28</sup> Upon proof beyond a reasonable doubt that the contraband article was used in violation of the FCFA, the court must order the seized property forfeited to the seizing law enforcement agency.<sup>29</sup> After the property is forfeited to the seizing law enforcement agency, the agency may:

- Retain the property for the agency’s use;
- Sell the property; or
- Salvage, trade, or transfer the property to any public or nonprofit organization.<sup>30</sup>

If the seizing law enforcement agency is a county or municipal law enforcement agency, the proceeds from a forfeiture must be deposited into a trust fund established by the county or municipality, and such proceeds may be used for school resource officer, crime prevention, safe neighborhood, drug abuse

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<sup>23</sup> See ss. 932.701–932.7062, F.S.

<sup>24</sup> S. 932.703(1)(a), F.S.

<sup>25</sup> “Monetary instrument” means coin or currency of the United States or any other country; a traveler’s check; a personal check; a bank check; a cashier’s check; a money order; a bank draft of any country; an investment security or negotiable instrument in bearer form or in other form such that title passes upon delivery; a prepaid or stored value card or other device that is the equivalent of money and can be used to obtain cash, property, or services; or gold, silver, or platinum bullion or coins. S. 932.703(1)(a)5., F.S.

<sup>26</sup> S. 932.703(2)(a), F.S.

<sup>27</sup> S. 932.703(2)(b), F.S.

<sup>28</sup> S. 932.704(4), F.S.

<sup>29</sup> S. 932.704(8), F.S.

<sup>30</sup> S. 932.7055(1), F.S.

education and prevention programs, or other law enforcement purposes except for meeting the normal operating expenses of the agency.<sup>31</sup> If the seizing agency is a state agency, the proceeds are deposited into the General Revenue Fund unless such agency has a dedicated trust fund created by statute to accept proceeds from a forfeiture.<sup>32</sup>

### Soliciting or Purchasing Prostitution

Section 796.07, F.S., defines prostitution as the giving or receiving of the body for sexual activity for hire.<sup>33</sup>

Under s. 796.07(2)(a)-(e) and (g)-(i), F.S., it is a second-degree misdemeanor:<sup>34</sup>

- To own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness,<sup>35</sup> assignation,<sup>36</sup> 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 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;
- 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.<sup>37</sup>

The penalty for a violation listed above is reclassified to a first-degree misdemeanor<sup>38</sup> for a second violation, and a third-degree felony<sup>39</sup> for any third or subsequent violation.<sup>40</sup>

Additionally, under s. 796.07(2)(f), F.S., a person who solicits, induces, entices, or procures another person to commit prostitution, lewdness, or assignation commits a first-degree misdemeanor for a first violation, a third-degree felony for a second violation, and a second-degree felony for a third or subsequent violation.<sup>41</sup> An offender convicted for soliciting another person to commit prostitution is also subject to additional penalties including:

- One hundred hours of community service;<sup>42</sup>

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<sup>31</sup> S. 932.7055(5)(a), F.S.

<sup>32</sup> S. 932.7055(6), F.S.

<sup>33</sup> This definition excludes sexual activity between spouses. S. 796.07(1)(b), F.S.

<sup>34</sup> A second-degree misdemeanor is punishable by up to 60 days in county jail and a fine not exceeding \$500. Ss. 775.082(4)(b) and 775.083(1)(e), F.S.

<sup>35</sup> "Lewdness" means any indecent or obscene act. S. 796.07(1)(c), F.S.

<sup>36</sup> "Assignation" means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement. S. 796.07(1)(d), F.S.

<sup>37</sup> S. 796.07(2), F.S.

<sup>38</sup> A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year and a \$1,000 fine. Ss. 775.082(4)(a) and 775.083(1)(d), F.S.

<sup>39</sup> A third-degree felony is punishable by a term of imprisonment not exceeding five years and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.; see s. 775.084, F.S. (applies to violent career criminals, habitual felony offenders, habitual violent felony offenders, and three-time violent felony offenders).

<sup>40</sup> S. 796.07(4), F.S.

<sup>41</sup> S. 796.07(2)(f) and (5)(a), F.S.

<sup>42</sup> S. 796.07(5)(b)1., F.S.

- Being required to pay for and attend an educational program about the negative effects of prostitution and human trafficking, such as a sexual violence prevention education program, including such programs offered by faith-based providers, if such a program is offered in the circuit in which the offender is sentenced;<sup>43</sup>
- A 10-day mandatory minimum jail sentence for a second or subsequent violation;<sup>44</sup>
- Vehicle impoundment up to 60 days if the offender used a car to commit the violation;<sup>45</sup>
- Inclusion of the offender's name on the Soliciting for Prostitution Public Database in certain situations;<sup>46</sup> and
- A \$5,000 civil fine.<sup>47</sup>

### Restitution

In addition to any punishment, a court must order a defendant to make restitution to a victim for damage or loss caused directly or indirectly by the defendant's offense; and damage or loss related to the defendant's criminal episode, which may include:

- Costs of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a recognized method of healing;
- Costs of necessary physical and occupational therapy and rehabilitation;
- Reimbursing the victim for income lost as a result of the offense; and
- Costs of necessary funeral and related services.<sup>48</sup>

An order of restitution does not bar any subsequent civil remedy or recovery, but the amount of such restitution shall be set off against any subsequent independent civil recovery.<sup>49</sup>

### Statutes of Limitations

A statute of limitations is an absolute bar to the filing of a lawsuit after a date set by law. A statute of limitations specifies when such time period begins, how long the limitation period runs, and the circumstances by which the running of the statute may be "tolled," or suspended. A statute of limitations usually begins to run when a cause of action accrues, which generally, is when the harm occurs.

Section 95.11, F.S., provides limitations on the commencement of actions other than for recovery of real property, including actions founded on abuse or related to an offense of sexual battery.

An action founded on alleged abuse<sup>50</sup> may be commenced at the latest of the following times:

- At any time within seven years after the age of majority;
- Within four years after the injured person leaves the dependency of the abuser; or
- Within four years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the abuse.<sup>51</sup>

However, an action related to a sexual battery<sup>52</sup> offense involving a victim who was under the age of 16 at the time of the act may be commenced at any time, unless the action would have been time barred on or before July 1, 2010.<sup>53</sup>

<sup>43</sup> S. 796.07(5)(b)2., F.S.

<sup>44</sup> S. 796.07(5)(c), F.S.

<sup>45</sup> S. 796.07(5)(d), F.S.

<sup>46</sup> S. 796.07(5)(e), F.S.

<sup>47</sup> S. 796.07(6), F.S.

<sup>48</sup> S. 775.089(1-2), F.S.

<sup>49</sup> S. 775.089(8), F.S.

<sup>50</sup> As defined in ss. 39.01, 415.102, or 984.03, F.S.

<sup>51</sup> S. 95.11(7), F.S.

<sup>52</sup> S. 794.011, F.S.

<sup>53</sup> S. 95.11(9), F.S.

## Vicarious Liability

“Vicarious liability” means liability that a supervisory party, such as an employer, bears for the actionable conduct of a subordinate or associate, such as an employee, based on the relationship between the two parties.<sup>54</sup>

## Punitive Damages

Punitive damages may be awarded in a civil action only if there is a reasonable showing by evidence in the record or proffered by the claimant to provide a reasonable basis for recovery of such damages.<sup>55</sup> A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence,<sup>56</sup> finds that the defendant was personally guilty of intentional misconduct or gross negligence.

An employer, principal, corporation, or other legal entity may be held liable for punitive damages based on a claim of vicarious liability for the conduct of an employee or agent only if the employee was found personally guilty of intentional misconduct or gross negligence and:

- The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct or engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant; or
- The officers, directors, or managers of the employer, principal, corporation, or other legal entity knowingly condoned, ratified, or consented to such conduct.<sup>57</sup>

“Intentional misconduct” means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.<sup>58</sup> “Gross negligence” means that the defendant’s conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.<sup>59</sup>

An award of punitive damages may typically not exceed the greater of:

- Three times the amount of compensatory damages awarded to each claimant; or
- \$500,000.<sup>60</sup>

However, if the fact finder determines that the wrongful conduct proven under this section was motivated solely by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant, it may award an amount of punitive damages up to the greater of:

- Four times the amount of compensatory damages awarded to each claimant; or
- \$2 million.<sup>61</sup>

Alternatively, if the fact finder determines that at the time of injury the defendant had a specific intent to harm the claimant and determines that the defendant’s conduct did in fact harm the claimant, there is no cap on the amount of awardable punitive damages.<sup>62</sup>

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<sup>54</sup> *Vicarious Liability*, Black’s Law Dictionary (3d pocket ed. 2006).

<sup>55</sup> S. 768.72(1), F.S.

<sup>56</sup> S. 768.725, F.S.

<sup>57</sup> S. 768.72(3), F.S.

<sup>58</sup> S. 768.72(2)(a), F.S.

<sup>59</sup> S. 768.72(2)(b), F.S.

<sup>60</sup> S. 768.73(1)(a), F.S.

<sup>61</sup> S. 768.73(1)(b), F.S.

<sup>62</sup> S. 768.73(1)(c), F.S.

Punitive damages generally may not be awarded against a defendant in a civil action if he or she establishes, before trial, that punitive damages have already been awarded against the defendant in any state or federal court in any action alleging harm from the same act or single course of conduct for which the claimant seeks compensatory damages.<sup>63</sup> However, if the court determines by clear and convincing evidence that the amount of prior punitive damages awarded was insufficient to punish the defendant's behavior, the court may permit a jury to consider an award of subsequent punitive damages.<sup>64</sup>

### Civil Causes of Action for Human Trafficking Victims

A victim of human trafficking has a federal cause of action under 18 U.S.C. § 1595; such action may be brought against any perpetrator of trafficking or any person who knowingly benefits from the trafficking of a victim.

Victims of human trafficking also have a state statutory cause of action under ch. 772, F.S., a chapter that provides civil remedies for criminal practices. Section 772.103, F.S., makes it unlawful for any person:

- Who has, with criminal intent, received any proceeds derived, directly or indirectly, from a pattern of criminal activity or through the collection of an unlawful debt, to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- Through a pattern of criminal activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity or the collection of an unlawful debt.
- To conspire or endeavor to violate any of the actions listed above.

In turn, s. 772.104, F.S., provides a cause of action for any person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of s. 772.103, F.S., due to human trafficking. Such injured person is entitled to recover, from the violator, threefold the amount gained from the human trafficking, or a minimum of \$200, and reasonable attorneys fees and court costs.<sup>65</sup> However, no punitive damages may be awarded and the defendant is entitled to attorney fees and costs if the claim was unsupported.<sup>66</sup>

The statute of limitations for an action pursuant to 18 U.S.C. § 1595 is 10 years.<sup>67</sup> The statute of limitations for an action pursuant to s. 772.104, F.S., due to human trafficking is 5 years.<sup>68</sup>

### Civil Cause of Action for Person Coerced into Prostitution

Under s. 796.09, F.S., a person has a cause of action for compensatory and punitive damages against:

- A person who coerced that person into prostitution;<sup>69</sup>
- A person who coerces that person to remain in prostitution; or
- A person who uses coercion to collect or receive any part of that person's earnings derived from prostitution.<sup>70</sup>

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<sup>63</sup> S. 768.73(2)(a), F.S.

<sup>64</sup> S. 768.73(2)(b), F.S.

<sup>65</sup> S. 772.104(2), F.S.

<sup>66</sup> S. 772.104(3), F.S.

<sup>67</sup> 18 U.S.C. § 1595(2)(c).

<sup>68</sup> S. 772.17, F.S.

<sup>69</sup> Prostitution has the same meaning as in s. 796.07, F.S.

<sup>70</sup> S. 796.09(1), F.S.



For purposes of s. 796.09, F.S., “coercion” means any practice of domination, restraint, or inducement for the purpose of, or with the reasonably foreseeable effect of, causing another person to engage in or remain in prostitution or to relinquish earnings derived from prostitution, and includes, but is not limited to:

- Physical force or threats of physical force.
- Physical or mental torture.
- Kidnapping.
- Blackmail.
- Extortion or claims of indebtedness.
- Threat of legal complaint or report of delinquency.
- Threat to interfere with parental rights or responsibilities, whether by judicial or administrative action or otherwise.
- Promise of legal benefit.
- Promise of greater financial rewards.
- Promise of marriage.
- Restraint of speech or communication with others.
- Exploitation of a condition of developmental disability, cognitive limitation, affective disorder, or substance dependency.
- Exploitation of victimization by sexual abuse.
- Exploitation of pornographic performance.
- Exploitation of human needs for food, shelter, safety, or affection.<sup>71</sup>

It is not a defense to a complaint under s. 796.09, F.S., that:

- The plaintiff was paid or otherwise compensated for acts of prostitution;
- The plaintiff engaged in acts of prostitution prior to any involvement with the defendant; or
- The plaintiff made no attempt to escape, flee, or otherwise terminate contact with the defendant.<sup>72</sup>

#### Adult Theater Proof of Age and Identity Requirements

An “adult theater” is an enclosed building, or an enclosed space within a building, used for presenting either films, live plays, dances, or other performances that are distinguished or characterized by an emphasis on matter relating to specific sexual activities for observation by patrons, and which restricts admission only to adults, or any business that features a person who engages in specific sexual activities for observation by a patron, and which restricts admission to only adults.<sup>73</sup>

Section 450.045, F.S., requires an adult theater to obtain proof of age and identity from each of its employees or independent contractors and to verify the validity of the identification and age verification documents with the issuer before the employee or contractor’s employment commences.<sup>74</sup> The theater must keep on record a copy of the employee or contractor’s driver license or state or federal government-issued photo identification card, along with a record of the verification of the validity of the identification and age verification document, during the entire period of employment or business relationship with the independent contractor, and for at least three years after the employee or independent contractor ceases employment or the provision of services.<sup>75</sup>

The Department of Business and Professional Regulation and its agents have the authority to enter and inspect an adult theater at any time during operating hours, unannounced and without prior notice, and to have access to identification and age verification documents kept on file by the adult theater.<sup>76</sup>

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<sup>71</sup> S. 796.09(3), F.S.

<sup>72</sup> S. 796.09(5), F.S.

<sup>73</sup> S. 847.001(2)(b), F.S.

<sup>74</sup> S. 450.045(3)(a), F.S.

<sup>75</sup> S. 450.045(3)(b), F.S.

<sup>76</sup> S. 450.045(3)(c), F.S.

An adult theater owner, operator, or manager who knowingly violates s. 450.045, F.S., commits a first-degree misdemeanor.<sup>77</sup>

## Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code<sup>78</sup> are listed in a single offense severity ranking chart (OSRC),<sup>79</sup> which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense.<sup>80, 81</sup> A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.<sup>82, 83</sup> The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, unless there is a valid reason for departure.<sup>84</sup>

## Law Enforcement Training

### *Basic Recruit Training*

Section 943.13, F.S., requires all law enforcement officer applicants to complete a Criminal Justice Standards and Training Commission (Commission)- approved basic recruit training program.<sup>85</sup>

An applicant may seek an exemption from completing a basic recruit training program if:

- He or she has previously completed a comparable basic recruit training program in this state or another state or for the federal government and served as a full-time sworn officer in this state or another state or for the federal government for at least one year, provided there is no more than an eight-year break in employment; or
- He or she served in the special operations forces for a minimum of five years, provided there is no more than a four-year break from the applicant's special operations forces experience.<sup>86</sup>

The Commission may require any applicant who qualifies for an exemption to complete additional training as it deems appropriate based on the applicant's prior training and experience.<sup>87</sup> The applicant must complete any such additional training within one year after receiving an exemption.<sup>88</sup>

### *Training in Identifying and Investigating Human Trafficking*

Within one year after beginning employment, each certified law enforcement officer must successfully complete four hours of training in identifying and investigating human trafficking.<sup>89</sup> The training must be developed by the Commission in consultation with the Department of Legal Affairs and the Statewide

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<sup>77</sup> S. 450.045(3)(d), F.S. A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year and a \$1,000 fine. Ss. 775.082(4)(a) and 775.083(1)(d), F.S.

<sup>78</sup> All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

<sup>79</sup> S. 921.0022, F.S.

<sup>80</sup> S. 921.0022(2), F.S.

<sup>81</sup> Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third-degree felony defaults to a level 1; an unlisted second-degree felony defaults to a level 4; an unlisted first-degree felony defaults to a level 7; an unlisted first-degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. S. 921.0023, F.S.

<sup>82</sup> Ss. 921.0022 and 921.0024, F.S.

<sup>83</sup> A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. 921.0024(1), F.S.

<sup>84</sup> If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. S. 921.0024(2), F.S.

<sup>85</sup> S. 943.13(9), F.S.

<sup>86</sup> Ss. 943.13(9)(a-b) and 943.131(2), F.S.

<sup>87</sup> S. 943.131(3), F.S.

<sup>88</sup> S. 943.131(4)(a), F.S.

<sup>89</sup> Completion of the training may count toward the 40 hours of instruction for continued employment or appointment. S. 943.17297, F.S.

Council on Human Trafficking. If an officer fails to complete the required training, his or her certification is placed on inactive status until the employing agency notifies the Commission that the officer has completed the training.<sup>90</sup>

### FDLE Uniform Crime Report (UCR) System

The Florida Department of Law Enforcement (FDLE) maintains the UCR system, which provides standardized summary-based reports on crime statistics based on data gathered from across the state.<sup>91</sup> The UCR system has operated since 1971 and traditionally released a report twice a year capturing seven crimes, known as the Index Crimes, chosen for the seriousness of the offenses. The Index Crimes include:

- Murder/non-negligent manslaughter.
- Sex offenses.
- Robbery.
- Aggravated assault/aggravated stalking.
- Burglary/breaking and entering.
- Larceny/theft.
- Motor vehicle theft.<sup>92</sup>

However, due to the transition to the collection and reporting of more robust and detailed crime data, known as incident-based reporting, the UCR system has moved away from semiannual reports and now releases only one report a year.<sup>93</sup>

### Florida's Incident-Based Reporting System (FIBRS)

FIBRS is FDLE'S newer incident-based reporting system that collects 56 more offense categories than summary-based reporting and includes more detailed victim, offender, arrestee, and property data on each single crime occurrence. Agency crime data is reported monthly and allows agencies to report up to 10 criminal offenses per incident. FIBRS allows for greater insight into crimes that have been occurring but have not previously been included in summary reports, such as drug offenses, fraud, gambling, or human trafficking.<sup>94</sup>

### USF Trafficking in Persons – Risk to Resilience Lab

The University of South Florida's (USF) Trafficking in Persons – Risk to Resilience Lab (Lab) is composed of students and faculty members who address human trafficking from an interdisciplinary approach, combining criminological, victim-centered, social welfare, mental health, and social justice perspectives. The Lab:

- Conducts research targeting knowledge gaps which impede advances in human trafficking prevention and intervention;
- Shares knowledge and proposes solutions to address human trafficking; and
- Provides resources to the Tampa Bay community and key stakeholders through a data repository for use by human trafficking researchers.<sup>95</sup>

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<sup>90</sup> *Id.*

<sup>91</sup> FDLE, *Uniform Crime Reports*, <https://www.fdle.state.fl.us/CJAB/UCR#:~:text=FDLE%27s%20Uniform%20Crime%20Report%20%28UCR%29%20system%20provide%20standardized,Pages%27%20section%20for%20the%20most%20recently%20released%20documents.> (last visited Mar. 20, 2023).

<sup>92</sup> FDLE, *FIBRS Use of Force Criminal Justice Data Transparency*, p.1, <https://www.fdle.state.fl.us/Media/Documents/Media-Packet-FINAL-03212022.aspx#:~:text=FIBRS%20is%20an%20incident-based%20reporting%20system%20that%20collects,agencies%20to%20identify%20and%20address%20evolving%20crime%20issues.> (last visited Mar. 20, 2023).

<sup>93</sup> *Id.*

<sup>94</sup> *Supra* note 92.

<sup>95</sup> USF, Department of Criminology, *USF Trafficking in Persons – Risk to Resilience Lab*, <https://tiplab.cbcs.usf.edu/> (last visited April 18, 2023).

## **Effect of the Bill**

The bill creates s. 787.061, F.S., to provide a civil cause of action for victims of human trafficking to recover damages against an adult theater, as defined in s. 847.001(2)(b), F.S., or an owner, operator, or manager of such theater, that knowingly allows a victim of human trafficking to work, perform, or dance at the adult theater. The bill includes specific legislative findings to support the creation of the cause of action. The bill allows the action to be brought in any circuit court in the state.

The bill defines a “victim of human trafficking” as a person subjected to coercion, as defined in s. 787.06(2), F.S., or by any other means, 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.

### Damages Recoverable

Under the bill, a victim may recover economic and noneconomic damages; punitive damages, as provided in ss. 768.72, 768.725, and 768.73, F.S.; reasonable attorney fees; and costs. Under the bill, economic damages include, but are not limited to:

- Past and future medical and mental health expenses;
- Repatriation expenses, when a victim elects repatriation; and
- All other reasonable costs and expenses incurred by the victim in the past or estimated to be incurred by the victim in the future as a result of the human trafficking.

Under the bill, noneconomic damages are nonfinancial losses that would not have occurred but for the victimization, and include:

- Pain and suffering;
- Inconvenience;
- Physical impairment;
- Mental anguish;
- Disfigurement;
- Loss of capacity for enjoyment of life; and
- Other nonfinancial losses.

The bill provides that the civil remedies provided for in this new section of law do not preempt any other remedy or cause of action provided by law, but that a victim may not recover under both this section and s. 772.104(2), F.S.

### Prohibition on Recovery

The bill provides that if the factfinder determines a parent or legal guardian knowingly trafficked the victim, facilitated such trafficking, or otherwise participated in the human trafficking of the victim, the court may not allow such parent or legal guardian to receive any distribution of damages awarded under this section.

### Consolidation

The bill authorizes a court to consolidate civil actions for the same defendant for the purpose of case resolution and aggregate jurisdiction.

### Statute of Limitations

The bill amends s. 95.11, F.S., to provide that an action under this section may be brought as specified in s. 95.11(7) or (9), F.S., as follows, whichever occurs later:

- Within 7 years after the victim reaches the age of majority;
- Within 4 years after the victim leaves the abuser;
- Within 4 years from the time of discovery by the victim of both the injury and the causal relationship between the injury and abuse; or
- For victims that were under the age of 16 at the time of the trafficking, at any time.

### Criminal Provisions

The bill amends s. 787.06, F.S. to require that:

- After satisfying any liens, the proceeds from any real or personal property seized and forfeited as provided by the Florida Contraband Forfeiture Act, must first be allocated to pay any order of restitution of a human trafficking victim in the criminal case for which the owner was convicted;
- If there are multiple victims, the proceeds must be allocated equally among the victims; and
- If restitution is satisfied, any remaining proceeds must be disbursed as required by s. 932.7055(5) – (9), F.S., which directs the funds to be deposited and disbursed for specified uses, which are generally law enforcement uses.

The bill amends s. 450.045, F.S., to increase the offense for failure of an owner, operator, or manager of an adult theater to comply with the proof of age and identity verification requirements from a first-degree misdemeanor to a third-degree felony and removes the language indicating that the violation must be done “knowingly.” The bill does not rank this offense, and as such, it is ranked as a level 1 offense on the Criminal Punishment Code OSRC.

The bill amends s. 796.07, F.S., to require an offender convicted of soliciting another person to commit prostitution, in addition to any other penalty imposed, to pay for and attend an educational program, if one exists in the judicial circuit in which the offender is sentenced, that provides education on the following:

- The relationship between demand for commercial sex and human trafficking.
- The impact of human trafficking on victims.
- Coercion, consent, and sexual violence.
- The health and legal consequences of commercial sex.
- The negative impact of commercial sex on prostituted persons and the community.
- The reasons and motivations for engaging in prostitution.

The bill authorizes a judicial circuit to establish such a program and allows such a program to be offered by a faith-based provider.

### Law Enforcement Human Trafficking Training

The bill amends s. 943.17297, F.S., to require that each certified law enforcement officer successfully complete four hours of training in identifying and investigating human trafficking as part of the basic recruit training of the officer as required pursuant to s. 943.13(9), F.S., or additional training pursuant to s. 943.131(4), F.S. The training must be developed by the Criminal Justice Standards and Training Commission in consultation with the Department of Legal Affairs and the Statewide Council on Human Trafficking.

### Statewide Data Repository for Anonymous Human Trafficking Data

The bill creates s. 1004.343, F.S., to establish the Statewide Data Repository for Anonymous Human Trafficking Data within the University of South Florida’s (USF) Trafficking in Persons – Risk to Resilience Lab. The bill provides that the repository has the following purposes:

- To collect and analyze anonymous human trafficking data to determine the impact of and trends in human trafficking in the state.
- To evaluate the effectiveness of state-funded initiatives to combat human trafficking.

- To inform statewide efforts among law enforcement, state agencies, and other entities apprehending and prosecuting persons committing human trafficking offenses.
- To provide intervention services.

The bill provides the USF faculty and staff assigned to the Lab must:

- Design, operate, maintain, and protect the integrity of the repository.
- Design the repository in consultation with FDLE and other law enforcement partners.
- Make the repository a user-friendly system for uploading anonymous human trafficking data, in which data can be uploaded quickly and at no additional cost to the required reporting entities.
- Analyze the data uploaded to the repository to identify initiatives and interventions that were successful in combatting human trafficking, including the prosecution of offenders and the assistance of victims.
- Work with law enforcement and state agencies to report data on human trafficking investigations and prosecutions.

The bill provides that the following agencies and organizations are “required reporting entities”:

- Law enforcement agencies operating with state or local government tax proceeds, including, but not limited to, municipal police departments, county sheriffs’ departments, county attorneys’ offices, and state attorneys’ offices.
- FDLE and any other state agencies that hold any data related to human trafficking.
- Service providers and other nongovernmental organizations that serve victims of human trafficking through state or federal funding.

The bill provides that any required reporting agency that submits data from its local jurisdiction to the UCR system or FIBRS may, but is not required to, also submit additional data to the repository. FDLE must upload or otherwise share with the repository relevant data reported by local jurisdictions to the UCR system or FIBRS on at least a quarterly basis.

The bill requires the following human trafficking data to be submitted by the required reporting agencies:

- An alleged offense being investigated or prosecuted, including a description of the alleged prohibited conduct and the associated case number.
- The age, gender, and race or ethnicity of each suspect and victim.
- The date, time, and location of the alleged offense.
- The type of human trafficking involved.
- Any other related prosecution charges.
- Information regarding any victim services organization or program to which the victim was referred.
- The disposition of the investigation or prosecution.

The bill requires any required reporting entity located in a county with a population of:

- More than 500,000 to begin reporting to the repository, to the UCR system, or to FIBRS on or before July 1, 2024, and to report at least quarterly thereafter.
- 500,000 or less to begin reporting to the repository, to the UCR system, or to FIBRS on or before July 1, 2024, and to report at least biannually thereafter.

The bill requires USF’s Trafficking in Persons – Risk to Resilience Lab to submit an annual report and analysis on its findings to the Governor, Attorney General, President of the Senate, and Speaker of the House, beginning July 1, 2025.

Section 1004.343, F.S., will be repealed July 1, 2026, unless reviewed and reenacted by the Legislature before that date.

The bill will become effective on July 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate positive impact on the revenues of private entities who offer educational programs relating to human trafficking and commercial sex to the extent they receive payment from offenders to attend such programs.

### D. FISCAL COMMENTS:

The bill may have an indeterminate negative impact on state and local governments to the extent that fewer proceeds from contraband forfeiture are disbursed to law enforcement agencies and related funds, due to the new requirement that the proceeds first be allocated to pay orders of restitution for human trafficking victims.

The bill may have an indeterminate positive impact on jail and prison beds by increasing the offense level for failure of an adult theater owner, operator, or manager to comply with proof of age and identity requirements to a third-degree felony, which may result in more jail and prison admissions.

The bill may also have an indeterminate negative impact on state expenditures due to costs required to establish educational programs relating to human trafficking and commercial sex. However, some costs may be offset by the requirement for offenders to pay for their attendance in the program. The bill does not, however, require the establishment of any new education programs.

The bill may also have an indeterminate negative fiscal impact on USF as a result of the costs required to establish, operate, and maintain the data repository and related services.