

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JDC 23-02 Human Trafficking

SPONSOR(S): Judiciary Committee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Leshko	Kramer

SUMMARY ANALYSIS

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. Under s. 772.104, F.S., any person who demonstrates by clear and convincing evidence that he or she has been injured by a person who, with criminal intent, received and utilized proceeds from human trafficking has a cause of action for threefold the amount gained from the human trafficking, and for reasonable attorney fees and court costs. Alternatively, 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; 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.

PCB JDC 23-02 creates s. 787.061, F.S., to provide a civil cause of action for victims of human trafficking against a trafficker or facilitator who victimized her or him. The bill allows a victim to recover economic and noneconomic damages; punitive damages; reasonable attorney fees; and costs. However, the bill also provides an affirmative defense to a claim against the owner or operator of a public lodging establishment for vicarious liability, if the defendant meets certain requirements. The bill provides limitations on the commencement of actions brought under this new section and amends s. 95.11, F.S., to clarify that an action brought under the bill's civil remedy provision may be brought within the same time period as is allowed for intentional torts based on abuse or, if applicable, sexual battery offenses on victims under age 16.

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 identify verification requirements from a first-degree misdemeanor to a third-degree felony. The bill amends s. 796.07, F.S., to require an offender convicted for soliciting another person to commit prostitution, in addition to any other penalty imposed, to pay for and attend an educational program relating to human trafficking and commercial sex, if one is available.

Additionally, 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 details the purposes of and specifies USF's duties in relation to the repository, requires specified agencies to report on a specified schedule, and describes the type of data to be collected.

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 to comply with proof of age and identity requirements to a third-degree felony, which may result in more jail and prison admissions. Additionally, the bill may have an indeterminate negative fiscal impact on state government.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED 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.¹ 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.²

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,³ or services:⁴

- By coercing an adult, commits a first-degree felony.^{5, 6}
- 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.⁷
- For commercial sexual activity with a mentally defective⁸ or mentally incapacitated⁹ person, commits a life felony.¹⁰

“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 substance¹¹ to a person for the purpose of exploiting that person.¹²

“Commercial sexual activity” means any prostitution, lewdness, or assignation offense or attempt to

¹ S. 787.06(2)(d), F.S.

² S. 787.06(1)(d), F.S.

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

⁴ “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.

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

⁶ A first-degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082(3)(b) and 775.083(1)(b), F.S.

⁷ S. 787.06(3)(a)1., (c)1., (e)1., and (f)1., F.S.

⁸ “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.

⁹ “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.

¹⁰ 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(3)(a) and 775.083(1)(a), F.S.

¹¹ S. 893.03, F.S.

¹² S. 787.06(2)(a), F.S.

commit such an offense, and includes a sexually explicit performance¹³ and the production of pornography.¹⁴

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

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.¹⁸

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

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.²¹

Public Lodging Establishment Human Trafficking Protocol Requirements

Section 509.096, F.S., requires a public lodging establishment²² to provide annual human trafficking awareness training to employees of the establishment who perform housekeeping duties in the rental units or who work at the front desk or reception area where guests ordinarily check in or check out. Such training must also be provided for a new employee within 60 days after he or she begins employment in those roles. Each employee must submit a signed and dated acknowledgment of having received the training.^{23, 24}

The training must be submitted to and approved by the Department of Business and Professional Regulation (DBPR) and must include all of the following:

- The definition of human trafficking;
- An explanation of the difference between sex trafficking and labor trafficking;

¹³ 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.

¹⁴ S. 787.06(2)(b), F.S.

¹⁵ S. 787.06(8)(b), F.S.

¹⁶ "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.

¹⁷ 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(3)(d) and 775.083(1)(b), F.S.

¹⁸ S. 787.06(4)(a), F.S.

¹⁹ S. 787.06(9), F.S.

²⁰ S. 943.0435, F.S.

²¹ 22 U.S.C. § 7102(11).

²² A "public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is either considered transient and rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less; or which is considered nontransient and is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less. S. 509.013(4), F.S.

²³ S. 509.096(1)(a), F.S.

²⁴ The establishment may keep the acknowledgment electronically and must provide it to the Department of Business and Professional Regulation upon request. S. 509.096(1)(a), F.S.

- Guidance specific to the public lodging sector concerning how to identify individuals who may be victims of human trafficking; and
- Guidance concerning the role of employees of a public lodging establishment in reporting and responding to suspected human trafficking.²⁵

All public lodging establishments are required to implement a procedure for the reporting of suspected human trafficking to the National Human Trafficking Hotline or to a local law enforcement agency.²⁶ Additionally, all such establishments are required to post a human trafficking public awareness sign²⁷ in a conspicuous location in the establishment which is accessible to all employees which must read:

If you or someone you know is being forced to engage in an activity and cannot leave, whether it is prostitution, housework, farm work, factory work, retail work, restaurant work, or any other activity, call the National Human Trafficking Resource Center at 888-373-7888 or text INFO or HELP to 233-733 to access help and services. Victims of slavery and human trafficking are protected under United States and Florida law.²⁸

The Division of Hotels and Restaurants of DBPR must impose an administrative fine of \$2,000 per day on a public lodging establishment that is not in compliance with these training and public awareness requirements. The establishment may avoid being fined if it submits written documentation assuring the Division all deficiencies will be corrected within 90 days of the notice of its violations.²⁹ However, these provisions do not establish a private cause of action, nor do they alter or limit any other existing remedies available to survivors of human trafficking.³⁰

According to one news report, from January 1, 2021³¹ through November 2022, more than 14,000 citations of violations of these requirements were issued to 6,669 hotels and other public lodging establishments. More than 100 of those hotels and other lodging establishments had at least six violations each. However, DBPR did not issue a single fine because all violations were corrected within the 90-day window provided by statute.³²

Soliciting or Purchasing Prostitution

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

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

- To own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness,³⁵ assignation,³⁶ 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;

²⁵ S. 509.096(2), F.S.

²⁶ S. 509.096(1)(b), F.S.

²⁷ The sign must be at least 11 inches by 15 inches in size, printed in easily legible font and in at least 32-point type, and printed in English and in Spanish and in any other language predominantly spoken in the area. S. 509.096(1)(c), F.S.

²⁸ S. 509.096(1)(c), F.S.

²⁹ S. 509.096(3), F.S.

³⁰ S. 509.096(4), F.S.

³¹ Enforcement of this section began on January 1, 2021.

³² David Fleshler, Spencer Norris, and Brittany Wallman, *Florida hotels have stacked up thousands of violations of a 2019 sex-trafficking law. But not one has been fined.*, Sun Sentinel, Nov. 20, 2022, at 4, <https://www.sun-sentinel.com/local/trafficking-investigation/fl-ne-sex-trafficking-investigation-hotels-complicity-20221120-g3hji2zqajbb7177mzfveeqiai-story.html> (last visited Mar. 21, 2023).

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

³⁴ 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.

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

³⁶ "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.

- 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.³⁷

The penalty for a violation listed above is reclassified to a first-degree misdemeanor³⁸ for a second violation, and a third-degree felony³⁹ for any third or subsequent violation.⁴⁰

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.⁴¹ An offender convicted for soliciting another person to commit prostitution is also subject to additional penalties including:

- One hundred hours of community service;⁴²
- 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;⁴³
- A 10-day mandatory minimum jail sentence for a second or subsequent violation;⁴⁴
- Vehicle impoundment up to 60 days if the offender used a car to commit the violation;⁴⁵
- Inclusion of the offender's name on the Soliciting for Prostitution Public Database;⁴⁶ and
- A \$5,000 civil fine.⁴⁷

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 abuse⁴⁸ may be commenced at the latest of the following times:

- At any time within seven years after the age of majority;

³⁷ S. 796.07(2), F.S.

³⁸ 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.

³⁹ A third-degree felony is punishable by a term of imprisonment not exceeding five years and a \$5,000 fine. Ss. 775.082(3)(e) and 775.083(1)(c), F.S.

⁴⁰ S. 796.07(4), F.S.

⁴¹ S. 796.07(2)(f) and (5)(a), F.S.

⁴² S. 796.07(5)(b)1., F.S.

⁴³ S. 796.07(5)(b)2., F.S.

⁴⁴ S. 796.07(5)(c), F.S.

⁴⁵ S. 796.07(5)(d), F.S.

⁴⁶ S. 796.07(5)(e), F.S. (if there is evidence that the offender provided a form of payment or arranged for the payment of such services).

⁴⁷ S. 796.07(6), F.S.

⁴⁸ As defined in ss. 39.01, 415.102, or 984.03, F.S.

- 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.⁴⁹

However, an action related to a sexual battery⁵⁰ 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, 2010.⁵¹

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.⁵²

Punitive Damages

Punitive damages may be awarded in any 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.⁵³ A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence,⁵⁴ 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.⁵⁵

“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.⁵⁶

“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.⁵⁷

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

- Three times the amount of compensatory damages awarded to each claimant; or
- \$500,000.⁵⁸

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:

⁴⁹ S. 95.11(7), F.S.

⁵⁰ S. 794.011, F.S.

⁵¹ S. 95.11(9), F.S.

⁵² *Vicarious Liability*, Black’s Law Dictionary (3d pocket ed. 2006).

⁵³ S. 768.72(1), F.S.

⁵⁴ S. 768.725, F.S.

⁵⁵ S. 768.72(3), F.S.

⁵⁶ S. 768.72(2)(a), F.S.

⁵⁷ S. 768.72(2)(b), F.S.

⁵⁸ S. 768.73(1)(a), F.S.

- Four times the amount of compensatory damages awarded to each claimant; or
- \$2 million.⁵⁹

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.⁶⁰

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.⁶¹ 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.⁶²

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, 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 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 actual damages sustained, or a minimum of \$200.⁶³ Alternatively, such person may instead recover from the violator threefold the amount gained from the human trafficking and reasonable attorney's fees and court costs.⁶⁴ However, no punitive damages may be awarded and the defendant is entitled to attorney fees and costs if the claim was unsupported.⁶⁵

The statute of limitations for an action pursuant to 18 U.S.C. § 1595 is 10 years.⁶⁶ The statute of limitations for an action pursuant to s. 772.104, F.S., due to human trafficking is 5 years.⁶⁷

Civil Cause of Action for A Person Coerced into Prostitution

⁵⁹ S. 768.73(1)(b), F.S.

⁶⁰ S. 768.73(1)(c), F.S.

⁶¹ S. 768.73(2)(a), F.S.

⁶² S. 768.73(2)(b), F.S. (any subsequent punitive damages must be reduced by the amount of any earlier punitive damage awards rendered in state or federal court).

⁶³ S. 772.104(1), F.S.

⁶⁴ S. 772.104(2), F.S.

⁶⁵ S. 772.104(3), F.S.

⁶⁶ 18 U.S.C. § 1595(2)(c).

⁶⁷ S. 772.17, F.S.

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;⁶⁸
- 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.⁶⁹

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.⁷⁰

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.⁷¹

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.⁷²

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.⁷³ 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

⁶⁸ Prostitution has the same meaning as in s. 796.07, F.S.

⁶⁹ S. 796.09(1), F.S.

⁷⁰ S. 796.09(3), F.S.

⁷¹ S. 796.09(5), F.S.

⁷² S. 847.001(2)(b), F.S.

⁷³ S. 450.045(3)(a), F.S.

relationship with the independent contractor, and for at least three years after the employee or independent contractor ceases employment or the provision of services.⁷⁴

DBPR 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.⁷⁵

An adult theater owner, operator, or manager who knowingly violates s. 450.045, F.S., commits a first-degree misdemeanor.⁷⁶

Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code⁷⁷ are listed in a single offense severity ranking chart (OSRC),⁷⁸ 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.^{79, 80} 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.^{81, 82} 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.⁸³

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.⁸⁴ 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.⁸⁵

⁷⁴ S. 450.045(3)(b), F.S.

⁷⁵ S. 450.045(3)(c), F.S.

⁷⁶ 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.

⁷⁷ 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.

⁷⁸ S. 921.0022, F.S.

⁷⁹ S. 921.0022(2), F.S.

⁸⁰ 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.

⁸¹ Ss. 921.0022 and 921.0024, F.S.

⁸² 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.

⁸³ 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.

⁸⁴ 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).

⁸⁵ 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).

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.⁸⁶

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.⁸⁷

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.⁸⁸

Effect of Proposed Changes

PCB JDC 23-02 creates s. 787.061, F.S., to provide a civil cause of action for victims of human trafficking to recover damages against a trafficker or facilitator who victimized her or him. 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.

Definitions

The bill provides the following definitions:

- A “victim of human trafficking” is a person subjected to coercion, as defined in s. 787.06(2), 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.
- A “trafficker” is any person who knowingly engages in human trafficking, attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking.
- A “facilitator” is a person who knowingly, or through gross negligence, assists or provides goods or services to a trafficker which aids or enables the trafficker to carry out human trafficking. The term includes an adult entertainment establishment, as defined in s. 847.001(2), F.S., that allows a victim of human trafficking to work, perform, or dance at an establishment. The term does not include a person who facilitates human trafficking while under duress, whether due to force, threat, or coercion.
- “Gross negligence” exists when a person has knowledge of information that would raise suspicions in a reasonable person and he or she deliberately refrains from obtaining confirmation of or acting on the information because he or she wants to remain ignorant, such that knowledge of the facts avoided can reasonably and fairly be imputed to the person who avoided obtaining such confirmation.

⁸⁶ *Id.*

⁸⁷ *Supra* note 84.

⁸⁸ USF, Department of Criminology, *USF Trafficking in Persons – Risk to Resilience Lab*, <https://tiplab.cbcs.usf.edu/> (last visited Mar. 20, 2023).

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; 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 by 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, except 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 or through gross negligence 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.

Affirmative Defense

The bill provides that in any action brought under this section against the owner or operator of a public lodging establishment based on a claim of vicarious liability, it is an affirmative defense if the owner or operator proves all of the following elements:

- The establishment was in compliance with the human trafficking awareness training, suspected human trafficking reporting protocols, and public awareness signage requirements provided in s. 509.096, F.S.
- The owner or operator exercised reasonable care and diligence in screening, training, overseeing, and supervising any employee alleged in the action to have been facilitators of, or otherwise participants in, human trafficking.
- The owner or operator made a reasonable attempt to ensure such employees complied with the recommendations and practices suggested or required in the training, protocols, and policies required in s. 509.096, F.S.

Consolidation

The bill authorizes a court to consolidate civil actions for the same trafficker or facilitator 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. 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 identify verification requirements from a first-degree misdemeanor to a third-degree felony. 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.

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 the Florida Department of Law Enforcement (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 shared 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 the victim was referred to.
- 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 UCR system, or to FIBRS on or before July 1, 2024, and to report at least quarterly thereafter.
- Less than 500,000 to begin reporting to the repository, to UCR system, or to FIBRS on or before July 1, 2025, 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, 2024.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 95.11, F.S., relating to limitations other than for the recovery of real property.

Section 2: Amends and republishes s. 450.045, F.S., relating to proof of identity and age; posting of notices.

Section 3: Creates s. 787.061, F.S., relating to civil actions by victims of human trafficking.

Section 4: Amends and republishes s. 796.06, F.S., relating to prohibiting prostitution and related acts.

Section 5: Creates s. 1004.343, F.S., relating to the Statewide Data Repository for Anonymous Human Trafficking Data.

Section 6: Provides an effective date of 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 fiscal impact on private entities who offer educational programs relating to human trafficking and commercial sex as they will receive payment from offenders to attend the program.

D. FISCAL COMMENTS:

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 to comply with proof of age and identity requirements to a third-degree felony, which may result in more jail and prison admissions. Additionally, the bill may have an indeterminate negative fiscal impact on state government as a result of costs required to establish educational programs relating to human trafficking and commercial sex; however, some of this cost may be offset by the requirement for offenders to pay for their attendance in the program. 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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES