

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 1440

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Flores

SUBJECT: Human Trafficking

DATE: April 1, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Fav/CS
2.			CJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1440 prohibits a person under 18 years of age from working in an adult theater even if the person's disabilities of nonage have been removed by marriage or otherwise. The bill also eliminates the statute of limitation for prosecutions under specified human trafficking provisions and revises and enhances penalties for various human trafficking and prostitution offenses. The bill allows for the expunction of criminal history records of certain criminal charges against victims of human trafficking regardless of the disposition of the arrest or of any charges.

The bill has an effective date of October 1, 2014, and may have a fiscal impact on local and state government correctional expenditures.

II. Present Situation:

Victims of human trafficking are young children, teenagers, men, and women. Victims are subjected to force,¹ fraud, or coercion for the purpose of sexual exploitation or forced labor. The International Labor Organization (ILO), the United Nations agency charged with addressing labor standards, employment, and social protections issues, estimates that as many as 27 million adults and children are in forced labor, bonded labor, and commercial sexual servitude at any

¹U.S. Department of Health and Human Services, Administration for Children and Families, *About Human Trafficking*, available at <http://www.acf.hhs.gov/trafficking/about/index.html#> (last visited March 27, 2014).

given time.² The federal government has estimated that the number of persons trafficked into the United States each year ranges from 14,500-17,500.³

Third party or pimp-controlled commercial sexual exploitation of children is linked to escort and massage services, private dancing, drinking and photographic clubs, major sporting and recreational events, major cultural events, conventions, and tourist destinations. About one-fifth of these children become involved in nationally recognized crime networks and are trafficked nationally. They are transported around the United States by a variety of means – cars, buses, vans, trucks or planes – and are often provided counterfeit identification to use in the event of arrest.

Survivors of human trafficking often face both criminalization and stigmatization. Trafficked persons are not always recognized or treated as victims by law enforcement and prosecutors. Despite being victims, individuals who are trafficked are often arrested and convicted of prostitution and other related offenses, and may plead guilty without understanding the consequences. Multiple arrests, incarceration, police violence, deportation, employment, and housing discrimination may result.⁴

In 2012, Florida passed comprehensive legislation that updated and enhanced Florida’s human trafficking statutes.⁵ Section 787.06, F.S., is Florida’s human trafficking statute and defines “human trafficking” as the “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person.” The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking using coercion for labor or services, or for sexual activity.⁶

Part I of ch. 450, F.S., commonly referred to as Florida’s Child Labor law, provides for the regulation of child labor in Florida. A person who violates any provision of Part I of ch. 450, F.S., commits a second degree misdemeanor⁷ and may be subject to a fine up to \$2,500.⁸

The Criminal Punishment Code (Code)⁹ is Florida’s framework for determining permissible sentencing ranges for noncapital felonies. Noncapital felonies sentenced under the Code are ranked in the offense severity ranking chart (Chart) from level one (least severe) to level 10 (most severe) and are assigned points based on the severity of the offense.¹⁰ If an offense is not listed in the Chart, it defaults to a score as provided in s. 921.0023, F.S., – third degree felonies

² See U.S. Department of State, *The 2013 Trafficking in Persons (TIP) Report*, (June 2013), available at <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm> (last visited March 27, 2014).

³ Sonide Simon, *Human Trafficking and Florida Law Enforcement*, Florida Criminal Justice Executive Institute, pg. 2, (March 2008), available at <http://www.fdle.state.fl.us/Content/getdoc/e77c75b7-e66b-40cd-ad6e-c7f21953b67a/Human-Trafficking.aspx> (last visited on March 27, 2014.)

⁴ *OJP Fact Sheet*, Office of Justice Programs, U.S. Department of Justice, (Dec. 2011), available at http://www.ojp.gov/newsroom/factsheets/ojpbs_humanttrafficking.html (last visited March 27, 2014).

⁵ Chapter 2012-97, Laws of Fla. This legislation took effect July 1, 2012.

⁶ Section 787.06(3), F.S.

⁷ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.072 and 775.0783, F.S.

⁸ Section 450.141.F.S.

⁹ Sections 921.002-921.0027, F.S.

¹⁰ Section 921.0022, F.S.

default to a Level one offense, second degree felonies default to a Level four offense, first degree felonies default to a Level seven offense, first degree felonies punishable by life default to a Level nine offense, and life felonies default to a Level 10 offense.

Section 787.06(3), F.S., provides the criminal penalties for human trafficking offenses.¹¹ Section 787.06(4), F.S., provides that it is a first degree felony ranked in Level nine of the Chart for a parent, legal guardian, or other person having custody or control of a minor to:

- Sell or otherwise transfer custody or control of the minor, or offer to sell or otherwise transfer custody or control of the minor with knowledge or in reckless disregard of the fact that as a consequence of the sale or transfer, the minor will be subject to human trafficking.¹²

Statute of limitations set forth time limitations for commencing criminal prosecutions and civil actions. In *State v. Garfalo*, the court found that “[t]he sole purpose of a statute of limitations in a criminal context is to prevent the State from hampering defense preparation by delaying prosecution until a point in time when its evidence is stale and defense witnesses have died, disappeared or otherwise become unavailable.”¹³

Section 943.0585, F.S., provides the procedures for expunging a criminal history record. When a criminal history record¹⁴ is expunged, criminal justice agencies¹⁵ other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record.¹⁶ FDLE is required to retain expunged records.¹⁷ Records that have been expunged are confidential and exempt from the public records law,¹⁸ and it is a first degree misdemeanor¹⁹ to divulge their existence.²⁰

Persons who have had their criminal history records expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment,²¹ petitioning the court for a record sealing or expunction, or are a defendant in a

¹¹ Each instance of human trafficking constitutes a separate crime, and authorizes separate punishment for each crime. Section 787.07(3), F.S. Convictions for human trafficking for commercial sexual activity offenses are included in the list of offenses that require an offender to be designated a sexual predator or sexual offender. Sections 776.21(4)(a), 943.0435(1)(a)1., 977.606(1)(b), and 944.607(1)(a)1., F.S.

¹² Section 921.0022(3)(i), F.S.

¹³ 453 So.2d 905, 906 (Fla. 4th DCA 1984)(citing *State v. Hickman*, 189 So.2d 254 (Fla. 2d DCS 1966)).

¹⁴ Section 943.045(6), F.S., defines a “criminal history record” as any nonjudicial record maintained by a criminal justice agency containing criminal history information.

¹⁵ Section 943.045(11), F.S., defines a “criminal justice agency” as: a court, the Florida Department of Law Enforcement; the Department of Juvenile Justice; the protective investigations component of the Department of Children and Families, which investigates crimes of abuse and neglect; or any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.

¹⁶ Section 943.0585(4), F.S. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order.

¹⁷ *Id.*

¹⁸ Section 943.0585(4)(c), F.S.

¹⁹ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

²⁰ Section 943.0585(4)(c), F.S. requires FDLE to disclose expunged criminal history records to specified entities for specified purposes.

²¹ These include candidates for employment with a criminal justice agency; applicants for admission to the Florida Bar; those seeing a sensitive position involving direct contact with children, the developmentally disabled, or the elderly with the Department of Children and Families, Division of Vocational Rehabilitation within the Department of Education, the Agency

criminal prosecution.²² In 1992, the Legislature amended s. 943.0585, F.S., to require a person petitioning the court for an expunction to first obtain a certificate of eligibility for expunction (certificate) from FDLE.²³ Once a petition to expunge is submitted, it is up to the court to decide whether the expunction is appropriate.²⁴

Section 943.0583, F.S., authorizes a victim of human trafficking to petition the court for the expunction for an offense committed while he or she was a victim of human trafficking. A “victim of human trafficking” is defined as a person subjected to coercion for the purpose of being used in human trafficking, a minor who is a victim of human trafficking, or an individual subject to human trafficking as defined by federal law.²⁵

A petition must be initiated with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking.²⁶ The petition must include:

- A sworn statement attesting that the victim is eligible for such expunction to the best of his or her knowledge or belief and does not have another petition to expunge or seal before any other court; and
- Official documentation of the victim’s status as a victim of human trafficking, if any exists.²⁷

The court’s determination of the petition must be by a preponderance of the evidence.²⁸ A determination made without official documentation must be made by a showing of clear and convincing evidence.²⁹ If a court grants an expunction, criminal justice agencies with custody of the expunged record, except FDLE, must physically destroy the record.³⁰ Persons who have had their human trafficking criminal history records expunged may lawfully deny or fail to acknowledge the arrests that were expunged unless they are a candidate for employment with a criminal justice agency or a defendant in a criminal prosecution.³¹

III. Effect of Proposed Changes:

Section 1 amends s. 450.021, F.S., to prohibit a person under 18 years of age from working in an adult theater regardless of whether such person’s disabilities of nonage have been removed by marriage or otherwise.

for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice; persons seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities, or a Florida seaport.

²² Section 943.0585(4)(c), F.S.

²³ Chapter 1992-73, Law of Fla.

²⁴ Section 943.0585, F.S.

²⁵ Section 943.0583(1)(c), F.S.

²⁶ Section 943.0583(4), F.S.

²⁷ Section 943.0583(6), F.S.

²⁸ Section 943.0583(3), F.S.

²⁹ Section 943.0583(5), F.S.

³⁰ Section 943.0583(8)(a), F.S. Records retained by FDLE are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, except that the record shall be made available to criminal justice agencies for their respective criminal justice purposes. Section 943.0583(10)(a), F.S.

³¹ Section 943.0583(8)(b), F.S.

Section 2 amends s. 450.045, F.S., to require an adult theater to obtain proof of the identity and age of its employees and independent contractors prior to employment or the provision of services. The adult theater must also verify the validity of the identification documents used to provide such proof. The adult theater is required to maintain a photocopy of the person's government-issued photo identification card, as well as proof of the verification of the validity of the identification document. These records must be maintained at the location where the employee or independent contractor works or provides services to the adult theater for at least three years. This section provides the Department of Business and Professional Regulation and its agents the authority to enter and inspect at any time a place or establishment and to have access to age verification documents kept on file by the adult theater.

Section 3 amends s. 775.15, F.S., to provide that there is no time limitation for the criminal prosecution of a violation of s. 787.06, F.S., relating to human trafficking offenses.

Section 4 amends s. 787.06, F.S., to provide that is a felony of the first degree for the following:

- To engage in human trafficking for labor or services of any child under 18 years of age.
- To use coercion for labor or services of an adult.
- For labor or services of any child under 18 years of age who is an unauthorized alien.
- To use coercion for labor or services of an adult who is an unauthorized alien.
- To use coercion for commercial sexual activity of an adult.
- For labor or services by the transfer or transport of any child under the 18 years of age from outside this state to within the state.
- To use coercion for labor or services done by transfer or transport of an adult from outside this state to within the state.
- For commercial sexual activity done by transfer or transport of any child under 18 years of age from outside this state to within this state, which term of punishment not exceed life.
- To use coercion for commercial sexual activity done by transfer or transport of an adult from outside this state to within the state.

A person commits a life felony for commercial sexual activity in which any child is under 18 years of age or in which any person is mentally defective or mentally incapacitated as those terms are defined.

The bill also creates a new felony offense in that any person who permanently brands or directs the branding of a victim commits a second degree felony. Permanently branded is defined as a mark on the individual's body which, if it can be removed or repaired at all, can only be removed or repaired by surgical means, laser treatment, or other medical procedure.

This section also provides that the defendant's ignorance of the victim's age, the victim's misrepresentation of his or her age, or the defendant's bona fide belief of the victim's age cannot be raised as a defense in a prosecution for human trafficking.

Section 5 amends s. 775.082, F.S., to provide that for a life felony committed on or after October 1, 2014, which is a violation of s.787.06(3)(g), F.S., (commercial sex trafficking in which a child under 18 years of age is involved), the punishment be a term of life imprisonment.

Section 6 creates s. 796.001, F.S., to provide legislative intent that adults who involve minors in behaviors prohibited under ch. 796, F.S. (prostitution) be prosecuted under other laws of the state, such as, but not limited to, s. 787.06, F.S., ch. 794, F.S., ch. 800, F.S., s. 810.145, F.S., ch. 827, F.S., and ch. 847, F.S.

Section 7 repeals s. 796.03, F.S., s. 796.035, F.S., and s. 796.036, F.S., which relate to various prostitution related offenses.

Section 8 amends s. 706.05, F.S., to provide that any person with reasonable belief or knowledge that another person is engaged in prostitution to live or derive support or maintenance from the earnings of such person's prostitution commits a second degree felony for a first offense, a first degree felony for a second offense and a first degree felony with a mandatory minimum term of imprisonment of 10 years for a third or subsequent offense.

Section 9 amends s. 797.07, F.S. This section prohibits prostitution and related acts and enhances the penalties for violations of certain sections of this section.

Section 10 amends s. 943.0583, F.S., to allow victims of human trafficking to petition for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed under ch. 796, F.S., and ch. 847, F.S., regardless of the disposition of the arrest or of any charges.

This section also provides that a person adjudicated not guilty by reason of insanity or found to be incompetent to stand trial for any such charge, the expunction of the criminal history record may not prevent the entry of the judgment or finding in state and national databases for use in determination of eligibility to purchase or possess a firearm or carry a concealed firearm. The expunction shall not prevent any governmental agency authorized by state or federal law to determine eligibility to purchase or possess a firearm or carry a concealed firearm from accessing or using the record of the judgment or finding in the court of its official duties.

Section 11 amends s. 921.0022, F.S., to make revisions and add offenses pertaining to human trafficking and prostitution to the severity ranking and the description of the offense to the Criminal Punishment Code.

Sections 12 – 30 amends ss. 39.01, 90.404, 772.102, 775.0877, 775.21, 787.01, 787.02, 794.056, 856.022, 895.02, 938.085, 938.10, 943.0435, 943.0585, 943.059, 944.606, 944.607, 948.013, and 948.32, F.S., to make technical changes.

Section 31 provides an effective date of October, 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on March 25, 2014, and reported the impact of the bill was indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.01, 90.404, 450.021, 450.045, 772.102, 775.082, 775.0877, 775.15, 775.21, 787.01, 787.02, 787.06, 794.056, 796.05, 796.07, 856.022, 895.02, 921.0022, 938.085, 938.10, 943.0435, 943.0583, 943.0585, 943.059, 944.606, 944.607, 948.013, and 948.32.

This bill creates section 706.001 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 796.03, and 796.035.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on April 1, 2014:

The Committee Substitute:

- Prohibits a person under 18 years of age from working in an adult theater regardless of whether or not the disabilities of nonage have been removed by marriage or otherwise.
- Requires the adult theater to obtain proof and verification of identity and age of its employees or independent contractors and to retain such proof for at least three years.
- Creates s.796.001, F.S., to provide legislative intent that for adults who involve minors in any behavior prohibited in ch. 796, F.S., (Prostitution) be prosecuted under certain laws of this state.
- Repeals ss. 796.03, 796.035, and 796.036, F.S.
- Allows for victims of human trafficking to petition for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking without regard to the disposition of the arrest of any charge.
- Makes revisions and adds offenses pertaining to prostitution and human trafficking to the severity ranking and a description of the offense to the Criminal Punishment Code.
- Provides technical changes to certain statutes to provide conformity.

- B. **Amendments:**

None.