

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 99 Sexual Exploitation

SPONSOR(S): Fresen

TIED BILLS: **IDEN./SIM. BILLS:** SB 202

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Batchelor	Schoolfield
2) Civil Justice Subcommittee			
3) Appropriations Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

HB 99 creates the Florida Safe Harbor Act to protect and provide shelter for sexually exploited children. Specifically, the bill makes the following changes:

- The bill makes amendments to definitions relating to abuse and sexual exploitation of children in Chapter 39, F.S. which has the effect of considering a child as dependent by the court (instead of being criminally prosecuted) when they willfully engage in prostitution;
- Requires law enforcement to deliver children picked up and alleged to be sexually exploited to a short-term safe house, if one is available;
- Creates a rebuttable presumption of law that children who have been sexually exploited should be placed in a safe house;
- The bill creates new sections of law related to safe harbor placements which provides process and requirements for services in safe houses;
- Amends the civil penalty for specified violations of prostitution from \$500 to \$5,000 and directs that \$4500 of the civil penalty be paid to the Department of Children and Family Services (DCF) to fund safe houses and short-term safe houses;

The cost associated with this bill is not expected to have a direct fiscal impact on state agencies. However, there could be a fiscal impact on Community Based Care lead agencies, under contract to DCF.

The bill provides an effective date of January 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Safe Harbor Act

In 2008, the state of New York signed the “Safe Harbor for Exploited Youth Act” into law. The act requires local districts to provide crisis intervention services for sexually exploited children and decriminalizes child prostitution, recognizing these children as victims, rather than as criminals. The law is designed to provide counseling, emergency services and long term housing solutions for these children.¹ After the passage of this legislation various programs have become available to young children who have been sexually exploited, including GEMS in New York² and the Paul and Lisa Program in Connecticut.³ Both of these programs have received recognition and grant funding through the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.⁴

Sexual Exploitation and Prostitution

Chapter 39, Florida Statutes, provides law for dependent children, who are the subject of abuse, neglect or abandonment and addresses sexual exploitation in the definition of “sexual abuse of a child.”⁵ In this definition, sexual exploitation of a child includes allowing, encouraging, or forcing a child to either solicit for or engage in prostitution; or engage in a sexual performance, as defined by Chapter 827, F.S. Currently, children who are allowed, encouraged or forced to engage in prostitution may be considered dependent by the courts⁶ and delivered to DCF for shelter and services in or out of their caregiver’s home. The definition of abuse from sexual exploitation in Chapter 39, Florida Statutes, does not include children who willfully engage in prostitution.⁷

The prohibition against prostitution is without respect to the age of the person offering, committing, or engaging in prostitution. A first offense for prostitution is a 2nd degree misdemeanor, a second offense is a 1st degree misdemeanor, and a third or subsequent offense is a third degree felony.⁸ In addition to the criminal penalties, a civil penalty of \$500 shall be assessed against individuals that solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.⁹

Any person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution, commits the offense of sex trafficking, a second degree felony.¹⁰ However, a person commits a first degree felony if the offense of sex trafficking is committed against a person who is under the age of 14 or if such offense results in death.¹¹

¹ Staff Analysis, HB 99 (2012); Department of Children and Family Services. (on file with committee staff).

² <http://www.gems-girls.org/>. (last visited 11/29/2011).

³ <http://www.paulandlisa.org/index.htm>. (last visited 11/29/2011).

⁴ http://www.ojjdp.gov/programs/csec_program.html. (last visited on 11/29/2011).

⁵ s. 39.01(67)(g), F.S.

⁶ s.39.0139, F.S.

⁷ s. 39.01(67)(g), F.S.

⁸ s. 796.07(4), F.S.,

⁹ s. 769.07(6), F.S.

¹⁰ s. 796.045, F.S.

¹¹ *Id.*

Sex-Trafficking and Prostitution of Children

It is estimated that about 293,000 American youth are currently at risk of becoming victims of commercial sexual exploitation. The majority of American victims of commercial sexual exploitation tend to be runaway youth living on the streets who are highly susceptible to become victims of prostitution. These children generally come from homes where they have been abused, or from families that have abandoned them, and often become involved in prostitution as a way to support themselves financially or to get the things they want or need.¹²

Other young people are recruited into prostitution through forced abduction, pressure from adults, or through deceptive agreements between parents and traffickers.¹³ In a study conducted at the University of New Hampshire in 2009, researchers found that among a sampling of law enforcement agencies for information concerning youth involved in prostitution, of the estimated 1,450 arrests /detentions in the U.S. in 2005, 95% involved third party exploiters, 31% were for what they labeled solo types of prostitution cases, and 12% involved sexual exploitation.¹⁴

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 organized crime networks and is 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.¹⁵ The average age at which girls first become victims of prostitution is 12-14; for boys and transgender youth it is 11-13.¹⁶

Services Currently Available for Shelter

The Department of Children and Families (DCF) acknowledges that foster homes, group homes and shelters used in the child welfare system are lacking in services or trained staff to address victims of sexual exploitation. DCF notes that victims in runaway shelters or group homes can continue to be psychologically manipulated and return to the control of the trafficker. Foster homes, group homes, and shelters are not ideal for several reasons including the fact that these residences are not equipped to deal with sexual exploitation trauma and also that the trafficker/pimp could easily find the child and threaten to harm the foster family or residents unless contact with the child is permitted.¹⁷

Services are available through the Children In Need of Services (CINS) program to provide short-term shelter, counseling, services, and case management in one of the 28 youth shelters statewide that are operated by DJJ.¹⁸ These shelters are primarily voluntary and a court may order the child to stay in a shelter for a period no longer than 120 days.¹⁹ Even under this longer stay option, only 10 shelters are

¹² Id.; Richard J. Estes and Neil Alan Weiner, *Commercial Sexual Exploitation of Children in the U.S, Canada and Mexico*, University of Pennsylvania (2001), available at www.sp2.upenn.edu/~restes/CSEC_Files/Exec_Sum_020220.pdf. (last visited 11/7/11)

¹³ Staff Analysis, HB 99 (2012); Department of Children and Family Services. (on file with committee staff); Francis T. Miko & Grace Park, *Trafficking in Women and Children: The U.S. and International Response*, p. 7. (Updated July 10, 2003), at <http://www.usembassy.it/pdf/other/RL30545.pdf>. (last visited 11/17/11).

¹⁴ Staff Analysis, HB 99 (2012); Department of Children and Family Services. (on file with committee staff); Kimberly J. Mitchell, David Finkelhor and Janis Wolak, *Conceptualizing Juvenile Prostitution as Child Maltreatment: Findings from the National Juvenile Prostitution Study*, p.22-26, University of New Hampshire Sage Publications

¹⁵ Staff Analysis, HB 99 (2012); Department of Children and Family Services. (on file with committee staff); Richard J. Estes and Neil Alan Weiner, *Commercial Sexual Exploitation of Children in the U.S, Canada and Mexico*, pp. 7-8. University of Pennsylvania (2001), available at www.sp2.upenn.edu/~restes/CSEC_Files/Exec_Sum_020220.pdf.

¹⁶ Id

¹⁷ Staff Analysis, HB 99 (2012); Department of Children and Family Services. (on file with committee staff).

¹⁸ Id

¹⁹ s. 984.226, F.S.

available statewide.²⁰ The CINS program shelters are not available for children who have been adjudicated dependent.²¹

Currently, DCF has identified 69 possible victims of sexual exploitation that are being served within the foster care system. Additionally, DCF has identified 55 children within the last year who have been arrested for prostitution and are currently being served through the Department of Juvenile Justice system.²² The Florida Department of Law Enforcement (FDLE) reports that during 2009, 22 children were arrested under the age of 16 for prostitution pursuant to 796.07(2), F.S.²³

Effect of Proposed Changes

The bill creates the Florida Safe Harbor Act to provide special care and services to all sexually exploited children and to include them in the dependency process. The bill makes significant policy changes related to prostitution by minors in the definition of sexual exploitation and how they are to be addressed by law enforcement and the type of facility in which they are to be served.

Intent Language

The bill creates legislative intent language as it relates to children that are victims of sexual exploitation. The bill recognizes that sexual exploitation is a problem in the state of Florida and nationwide, identifying that many of these children have a history of abuse and neglect and are often a hard population to serve. The legislative intent states that traffickers maintain control of these children through manipulation and force and that although these children are minors and unable to consent to sexual activity they are often treated as perpetrators of a crime, rather than as victims. The intent language adds that these children are victims and should be treated through the dependency process where they can receive needed treatment, counseling and rehabilitative services.

Definitions

Specifically, the bill amends the following definitions in s. 39.01, F.S:

- “abuse” is amended so that it includes sexual abuse.
- “child who is found to be dependent” is amended to include children that have been sexually exploited and have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care. The effect of this change will specifically include sexually exploited children within dependency actions.
- “sexual abuse of a child” is amended so that sexual exploitation includes the act of a child offering to engage in or engaging in prostitution or sexual acts. This change will include minors who offer to engage in prostitution as a dependent child and allow them to be processed through the dependency court system under chapter 39, F.S., as a victim of abuse instead of being processed through the criminal court. The definition is also amended to include participation in sex trafficking as an act of sexual exploitation of a child.

Transfer to a Short-term Safe House

The bill amends s. 39.401, F.S., by requiring law enforcement officers to deliver a sexually exploited child to a short-term safe house if one is available. The effect of this change will remove discretion for the situation from the law enforcement officer and require them to deliver the minor to a short-term safe house, regardless of whether the child is a repeat offender or voluntarily engaging in prostitution. The apparent effect of this change is that these children are alleged to be dependent and victims of abuse and will not be processed through criminal courts. Further, the bill states that law enforcement will

²⁰ Staff Analysis, HB 99 (2012); Department of Children and Family Services. (on file with committee staff).

²¹ s.984.226(5)(d), F.S.

²² Staff Analysis, HB 99 (2012); Department of Children and Family Services. (on file with committee staff).

²³ s.984.226(5)(d), F.S.

²³ Staff Analysis, HB 99 (2012); Florida Department of Law Enforcement. (on file with committee staff).

deliver the child to a short term safe house, if available. Since short term safe houses and safe houses as defined in this bill are not currently available in Florida, DCF would need to find placement for these children using existing resources.

Shelter Placement

The bill amends s. 39.402, F.S., by creating a rebuttable presumption on placement of a sexually exploited child in a short-term safe house. The bill requires DCF, at the hearing regarding continued shelter care, to establish probable cause that the child has been sexually exploited, and that placement in a short-term safe house is most appropriate. The bill also adds sexual exploitation to the list of conditions which show reasonable effort by DCF to prevent or eliminate the need for removal of a child from the home. The effect of this change will mandate that the short-term safe house is the only appropriate shelter placement for the child who has been sexually exploited. This removes discretion from the court and DCF to determine alternate shelter placements.

Disposition Hearings

The bill also amends s. 39.521, F.S., to add sexual exploitation as one of the reasons a child cannot safely remain at home in the findings by the court during a disposition hearing. Additionally, the bill provides a rebuttable presumption that the court must commit a child who is the victim of sexual exploitation to a safe house when the child has been adjudicated dependent. The effect of these changes will provide cause for the court to direct a child who is the victim of sexual exploitation to only be placed in a safe house. This removes discretion from the court and DCF through community based care lead agencies (CBC) to determine alternate shelter placements.

Safe-Harbor Placement

The bill creates s. 39.524, F.S., relating to safe-harbor placement. The section requires any child 6 years of age or older who has been found to be a victim of sexual exploitation to be assessed for placement in a safe house, and if placement is warranted, it shall be granted, if a safe house is available. The manner in which assessments are conducted is included in this new section of law as well as a requirement that the results of assessments be included in the judicial reviews for dependent children. The bill requires safe houses to establish special permanency teams to address special challenges of this population. It also requires safe houses to report to DCF its success in achieving permanency for those children. DCF will be required to annually report to the Legislature on the placement of children in safe houses. It is unclear how these special permanency teams will coordinate with community based care lead agencies who currently work to achieve permanency for dependent children.

Safe Harbors for Sexually Exploited Children

The bill creates s. 409.1678, F.S., relating to safe harbors for children who are victims of sexual exploitation. The bill creates definitions for:

- “child advocate” Each short-term safe house must employ a child advocate to accompany the child to court, meet with law enforcement and serve as a liaison between the safe house and the court. It is not clear from the bill how this advocate will coordinate with case management staff of community based care lead agencies and the guardian ad litem in their advocacy role with the court.
- “safe house” as a living environment that has set aside gender-specific, separate and distinct living quarters for sexually exploited children who have been adjudicated dependent or delinquent and need to reside in a secure facility with 24-hour-awake staff. The safe house is required to be licensed by DCF as a child-caring agency under s. 409.175, F.S.
- “secure” means that a child is supervised 24 hours a day by staff who are awake while on duty.

- “sexually exploited child” to mean a dependent child who has suffered sexual abuse, as defined in 39.01(67)(g) and is not eligible for federal benefits through the Trafficking Victims Protection Act.²⁴
- “short-term safe house” means a shelter operated by a licensed child-caring agency, includes runaway youth center, gender specific, separate living quarters for sexually exploited children, and provides care and counseling to exploited children.

Also in s. 409.1678, F.S., the bill directs each of the DCF circuits to address the needs of sexually exploited children as a component of a master plan. The bill provides that the lead agency, not-for-profit agency or local government entity that is providing safe house services is responsible for security, counseling, residential care, food, clothing etc for children who are placed there. The lead agency or other service provider has legal authority over the child as provided in Chapter 39 and has authority to utilize resources as needed for the child’s health and education. The bill also provides that the local circuit administrator may contract with local law enforcement, to the extent funds are available, to train officers working with sexually exploited children.

Civil Penalty Related to Prostitution

The bill amends s. 796.07, F.S., amending the civil penalty that may be assessed against violators of specified provisions related to prostitution. Currently, a civil penalty of \$500 must be assessed against a person who violates s. 796.07(2)(f), by soliciting, inducing, enticing, or procuring another to commit prostitution, lewdness, or assignation. The bill increases the civil penalty to \$5,000 and directs that \$4,500 of the penalty be paid to DCF to fund safe houses and short-term safe houses and the remaining \$500 shall be paid to the circuit court administrator. The effect of this change creates a proposed funding source for the safe houses for sexually exploited children. According to information provided by the Clerk of Courts, the collections of the fines by counties are not always certain and collection amounts vary by year.²⁵

Eligibility for Award under Victims Assistance Program

The bill amends s. 960.065, F.S., to allow victims of sexual exploitation to be eligible for compensation (awards), regardless of whether or not the child is willfully engaging in prostitution. The Victims Assistance program is overseen by the Attorney General’s office and provides financial assistance for medical care, lost income, mental health services, funeral expenses and other out-of-pocket expenses directly related to the injury, to persons who are eligible.²⁶

Release or delivery from Custody

The bill amends s. 985.115, F.S., to include short term safe house as an option for the release of a child after they have been taken into custody.

²⁴ 22 USC, ss.7101

²⁵ Email from Randy Long at the Clerk of Courts, received 11/16/2011. (on file with committee staff).

²⁶ <http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument> (last visited 12/2/2011).

The bills amends s. 985.145, F.S. and s. 985.15, F.S., by creating a presumption that juvenile probation officers and the state attorney will not file a petition for delinquency for an act related to prostitution unless the child has been previously adjudicated delinquent.

B. SECTION DIRECTORY:

Section 1: Creates title of Florida Safe Harbor Act

Section 2: Amends s. 39.001, F.S., relating to purposes and intent; personnel standards and screening.

Section 3: Amends s. 39.01, F.S., relating to definitions.

Section 4: Amends s. 39.401, F.S., relating to taking a child alleged to be dependent into custody; law enforcement officers and authorized agents of the department.

Section 5: Amends s. 39.402, F.S., relating to placement in a shelter.

Section 6: Amends s. 39.521, F.S., relating to disposition hearings; powers of disposition.

Section 7: Creates s. 39.524, F.S., relating to safe-harbor placement.

Section 8: Creates s. 409.1678, F.S., relating to safe harbor for children who are victims of sexual exploitation.

Section 9: Amends s. 796.07, F.S., relating to prohibiting prostitution, etc.; evidence; penalties; definitions.

Section 10: Amends s. 960.065, F.S., relating to eligibility for awards.

Section 11: Amends s. 985.115, F.S., relating to release or delivery from custody.

Section 12: Amends s. 985.145, F.S., relating to responsibilities of juvenile probation officer during intake; screenings and assessments.

Section 13: Amends s. 985.15, F.S., relating to filing decisions.

Section 14: Provides an effective date of January 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The civil penalty related to prostitution for persons who violate s.796.07(2)(f),F.S., is increased from \$500 to \$5000. The \$4500 increase is to be paid to DCF to fund safe houses and short-term safe houses. According to information provided by the Clerk of Courts, the collections of the fines by counties are not always certain and collection amounts vary by year.²⁷ The viability of this revenue source cannot be determined.

²⁷ Email from Randy Long at the Clerk of Courts, received 11/16/2011. (on file with committee staff).

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The cost associated with this bill is not anticipated to have a direct fiscal impact on state agencies. However, it could have an impact on community based care (CBC) lead agencies (under contract with DCF) when safe houses and short-term safe houses are available. CBC agencies are required to serve all dependent children referred to their agency. Therefore any additional cost would have to be absorbed by current contract funds to the CBC agency. The additional cost to lead agencies when providing services in a safe house or short-term safe house could be as much as \$15,841,000 if safe houses and short-term safe houses were used statewide. However, at the time of this analysis neither of these facilities are available.

Assumptions: It is estimated that residential facilities which are similar to a safe house and short-term safe house may cost \$350 per child per day.²⁸ DCF currently serves 69 children and DJJ serves 55 children for a total of 124 children who may qualify for services under this legislation if it were in force today.²⁹

If a child is adjudicated dependent and is taken to a short term safe house for 30 days and then to a safe house for the remainder of the year, the estimated cost per day per child could be:

- \$350.00 per day for 365 days: \$127,750 per year.
- 124 potential children at \$127,750 per year = \$15,841,000 potential annual cost.
- Adjustment to annual cost for 69 DCF children already being served at an average of \$100 per day³⁰ is \$2,518,500 annually.

Summary:

\$15,841,000 annual cost for 124 children

- \$2,518,500 less average cost to serve 69 DCF children in care now

\$13,322,500 Adjusted cost to serve 124 children now known to the DCF and DJJ system.

²⁸ Staff Analysis, HB 99 (2012); Department of Children and Family Services. (on file with committee staff).

²⁹ *Id.*

³⁰ Email from Barney Ray at the Department of Children and Families; received 12/1/2011. (on file with committee staff).

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:

- Lines 217-219 provides that children who are engaging in prostitution willingly will be considered as a sexually exploited and processed through the Dependency court system as opposed to the criminal courts. This could have the effect of decriminalizing prostitution for minors who willingly engage in this act.
- Lines 239-241 and 445-448 provides that a child shall be taken to a safe house or short term safe house, if one is available. This removes discretion from the court or DCF to place a child in other settings other than the safe house when warranted. Since safe houses as described in the bill are not currently available, DCF will need to place children who are adjudicated dependent as a result of this legislation into the current residential options of the child welfare system.
- Lines 500-507 provides for special permanency teams to work with children who are victims of sexual exploitation. It is unclear how these teams will coordinate with community based care lead agencies who currently work to achieve permanency for dependent children.
- Lines 527-532 provides for a definition of "child advocate". It is not clear how this advocate will coordinate with case management staff of community based care lead agencies and the Guardian ad Litem in advocacy efforts.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGE