

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 107 Human Smuggling

**SPONSOR(S):** Snyder and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 424

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security &amp; Public Safety</u>	<u></u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Safety &amp; Security Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Policy &amp; Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

HB 107 creates section 877.28, F.S. which makes it a third degree felony for a person to transport *into the state* an individual who the person knows is illegally entering the United States or has illegally entered or remained in the United States. The section also provides that:

- If the person transported in violation of this section is a minor, the offense will be a second degree felony.
- If a violation of the section results in great bodily harm to a person transported, a five year minimum mandatory sentence must be imposed.
- If a violation of the section results in the death of a person transported, a ten year minimum mandatory minimum sentence must be imposed.

The section also provides that a person commits a separate offense for each person he or she transports in violation of the section.

This bill appears to have an indeterminate fiscal impact on the Department of Corrections.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: This bill provides criminal penalties for activities that may not currently be punishable under state law.

Promote personal responsibility: This bill creates criminal penalties for someone who transports *into the state* an individual who the person knows is illegally entering the United States or has illegally entered or remained in the United States

#### B. EFFECT OF PROPOSED CHANGES:

*Human Trafficking and sex trafficking offenses:* Section 787.06, F.S. makes it a second degree felony for any person to knowingly:

1. Engage, or attempt to engage, in human trafficking with the intent or knowledge that the trafficked person will be subjected to forced labor or services; or
2. Benefit financially by receiving anything of value from participation in a venture that has subjected a person to forced labor or services;

The term “human trafficking” is defined by that section to mean transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport.

Section 796.045, F.S. provides that 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. The offense is a second degree felony and is a first degree felony if committed against a victim under the age of 14 or if it results in death.

Florida statutes do not specifically provide criminal penalties for transporting a person into the state who is illegally entering or remaining in the United States.

*Laws of other jurisdictions:* Federal law governs whether a person is legally authorized to enter or remain in this country. Federal law provides criminal penalties for illegally transporting a person into the country. Specifically, 8 U.S.C. s. 1324 provides criminal penalties for any person who:

1. knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

2. knowing or in reckless disregard of the<sup>1</sup> fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;
3. knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;

Several other states have passed legislation in recent years making it unlawful to transport a person who is illegally in the country or entering the country. For example, Colorado's law provides that a person commits "smuggling of humans" if, "for the purpose of assisting another person to enter, remain in, or travel through the United States or the state of Colorado in violation of immigration laws, he or she provides or agrees to provide transportation to that person in exchange for money or any other thing of value".

*Effect of bill:* HB 107 creates section 877.28, F.S. which makes it a third degree felony for a person to transport *into the state* an individual who the person knows is illegally entering the United States or has illegally entered or remained in the United States. The section also provides that:

- If the person transported in violation of this section is a minor, the offense will be a second degree felony.
- If a violation of the section results in great bodily harm to a person transported, a five year minimum mandatory sentence must be imposed.
- If a violation of the section results in the death of a person transported, a ten year minimum mandatory minimum sentence must be imposed.

The section also provides that a person commits a separate offense for each person he or she transports in violation of the section.

#### C. SECTION DIRECTORY:

Section 1. Creates s. 877.28, F.S., relating to human smuggling.

Section 2. Provides effective date of October 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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<sup>1</sup> See, C.R.S.A. s. 18-13-128; See also, Arizona - A.R.S. s. 13-2319; Oklahoma – 21 Okl.St.Ann. s. 446; Tennessee – T.C.A. s. 39-17-114

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate – see fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill would criminalize the activity of transporting into the state an individual who the person knows is illegally entering the United States or has illegally entered or remained in the United States. This activity is already punishable under federal law.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. The bill creates new third degree and second degree felony offenses for activities which currently may not be punishable under state law. Additionally, the bill will require the imposition of five or ten year minimum mandatory sentences for certain offenses. As a result, the bill may have a prison bed impact.

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### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

The bill sponsor submitted the following statement:

This bill, if enacted, will provide local and state law enforcement entities a much needed resource in their efforts to protect Florida's borders. Currently, there is no state law against the smuggling of illegal immigrants into Florida. When smugglers are apprehended by state law enforcement personnel, they must wait for Federal investigators to take over the case. This can result in the loss of evidence, the disappearance of witnesses, the destruction of the crime scene, and a weaker criminal case.

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**