

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1017 Human Trafficking

SPONSOR(S): Criminal Justice Subcommittee; Spano; Kerner and others

TIED BILLS: CS/HB 1019, CS/HB 1021 **IDEN./SIM. BILLS:** CS/SB 1440

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Thomas	Cunningham
2) Justice Appropriations Subcommittee	12 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee		Thomas	Havlicak

SUMMARY ANALYSIS

Section 787.06, F.S., 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, and using coercion for commercial sexual activity. In recent years, the Legislature has overhauled Florida's human trafficking laws to increase penalties for human trafficking and to make human trafficking prosecutions easier. The Legislature has also recognized the plight of victims of human trafficking, and has passed laws designed to protect and assist such persons.

The bill amends a variety of statutes to prevent human trafficking, enhance penalties related to human trafficking, and provide protections to human trafficking victims. Specifically, the bill:

- Amends s. 450.021, F.S., to prohibit minors from working in an adult theater;
- Amends s. 450.045, F.S., to require an adult theater to verify the age of each of its employees or independent contractors, and maintain such records;
- Amends s. 775.15, F.S., to remove the statute of limitations for human trafficking violations;
- Amends s. 787.06, F.S., to increase certain penalties relating to the trafficking of children;
- Amends s. 787.06, F.S., to create a new penalty if a trafficker permanently brands their victim;
- Create s. 796.011, F.S., to provide legislative intent that adults who involve children in any prostitution-related act should not be prosecuted under ch. 796, F.S., but should rather be prosecuted under other criminal laws;
- Amends s. 796.05, F.S., to increase penalties for those who derive support from the proceeds of prostitution;
- Amends s. 796.07, F.S., to increase various prostitution-related offenses from second degree misdemeanors to third degree felonies; and
- Amends s. 943.0583, F.S., to expand provisions relating to the expunction of criminal history records for victims of human trafficking.

The Criminal Justice Impact Conference met on March 25, 2014, and found the prison bed impact of this bill to be indeterminate. The bill increases penalties for current human trafficking offenses, primarily where the victim is under the age of 18. Since these are new penalties the number of offenders that will be sentenced to prison cannot be predicted. However, in 2013-2014, no one was sentenced for any of the existing human trafficking offenses, so this impact will likely be insignificant. The increase of misdemeanor penalties for prostitution to felonies may create a significant increase in prison beds. See FISCAL IMPACT ON STATE GOVERNMENT.

The bill may have a negative jail bed impact in that it creates two new second degree misdemeanor offenses in the Child Labor Law.

The bill is effective October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, teenagers, men, and women. Victims are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.¹ The International Labor Organization, the United Nations' agency charged with addressing labor standards, employment, and social protection issues, estimates that as many as 27 million adults and children are in forced labor, bonded labor, and commercial sexual servitude at any 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

It is estimated that as many as 300,000 American youth are currently at risk of becoming victims of commercial sexual exploitation.⁴ The majority of American victims of commercial sexual exploitation tend to be runaway youth living on the streets, and generally come from homes where they have been abused, or from families that have abandoned them. These children often become involved in prostitution as a way to support themselves financially.⁵ The average age at which girls first become victims of prostitution is 12-14; for boys and transgender youth it is 11-13.⁶

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 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 not understanding the consequences. Multiple arrests, incarceration, police violence, deportation, employment, and housing discrimination may result.⁷

2012 Florida Legislation on Human Trafficking

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,

¹ U.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 on March 6, 2014).

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 on March 6, 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 6, 2014).

⁴ *OJP Fact Sheet*, Office of Justice Programs, U.S. Department of Justice, December 2011, available at http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html (last visited on March 6, 2014).

⁵ 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 <http://www.sp2.upenn.edu/restes/CSEC.htm> (last visited March 6, 2014).

⁶ *Id.*

⁷ Melissa Broudo and Sienna Baskin, *Vacating Criminal Convictions For Trafficked Persons: A Legal Memorandum for Advocates and Legislators*. Urban Justice Center. The Sex Workers Project, April 3, 2012, available at <http://www.sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf> (last visited on March 6, 2014).

or for commercial sexual activity.⁸ In 2012, Florida passed comprehensive legislation that updated and enhanced Florida's human trafficking statutes.⁹ The 2012 law:

- Combined Florida's three existing human trafficking statutes into one statute making it more user-friendly for law enforcement;
- Increased penalties for the crime of human smuggling from a first-degree misdemeanor to a third degree felony;
- Provided that those convicted of human sex trafficking may be designated as sex offenders and sex predators;
- Provided that any property used for human trafficking is subject to forfeiture;
- Required massage establishments and employees to present valid photo identification upon request; and
- Gave jurisdiction for human trafficking offenses to the Statewide Prosecutor and the Statewide Grand Jury.

Effect of the Bill

The bill amends a variety of statutes to prevent human trafficking, enhance penalties related to human trafficking, and provide protections to human trafficking victims. A description of these statutes and the changes made by the bill follows.

Child Labor Laws

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. The regulations include provisions:

- Requiring children to be at least a certain age to work in specified occupations;
- Requiring employers to obtain and keep on record proof of a child's age;
- Requiring employers to display posters notifying minors of the Child Labor Law;
- Prohibiting children of certain ages from working in specified hazardous occupations;
- Limiting the hours children of certain ages may work; and
- Providing for enforcement of the Child Labor Law.

A person who violates any provision of part I of ch. 450, F.S., commits a second degree misdemeanor¹⁰ and may be subject to a fine up to \$2,500.¹¹

Effect of the Bill

The bill amends s. 450.021, F.S., to prohibit a person under the age of 18¹² from working in an adult theater.¹³ The bill also 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 must 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 kept during the entire period of employment or business relationship and for at least three years after the end of the employment or business relationship. The bill authorizes the Department of Business and Professional Regulation to enter and inspect an adult theater during operating hours, without prior notice, to enforce these provisions.

Human Trafficking - Criminal Penalties

⁸ Section 787.06(3), F.S.

⁹ Chapter 2012-97, L.O.F. This legislation took effect July 1, 2012.

¹⁰ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

¹¹ Section 450.141, F.S.

¹² Regardless of whether the person's disabilities of nonage have been removed by marriage or otherwise.

¹³ "Adult theater" means 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 depicting, describing, or relating to specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults. Section 847.001(2)(b), F.S.

The Criminal Punishment Code / Offense Severity Ranking Chart

The Criminal Punishment Code (Code)¹⁴ 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 ten (most severe) and are assigned points based on the severity of the offense.¹⁵ 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 default to a Level 1 offense, second degree felonies default to a Level 4 offense, first degree felonies default to a Level 7 offense, first degree felonies punishable by life default to a Level 9 offense, and life felonies default to a Level 10 offense.

Points are also assigned and accrue based upon any additional offenses, victim injury, sexual contact, prior offenses, legal status violations, community sanction violations, possession of a firearm, and prior serious felonies.¹⁶ Points accrued for any of these factors are added (and multiplied if a sentencing multiplier applies) to determine one's total sentence points.

If total sentence points are less than or equal to 44 points, the lowest permissible sentence is any non-state prison sanction (e.g., probation). The maximum penalty depends on the felony degree of the primary offense.¹⁷ The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony is fifteen years, and for a third degree felony is five years.

If total sentence points are greater than 44 points, one must subtract 28 points from the total sentence points and decrease the remaining total by 25 percent. This resulting figure is the lowest permissible sentence in prison months.¹⁸ Again, the maximum penalty depends on the felony degree of the primary offense.¹⁹

Human Trafficking Offenses

Section 787.06(3), F.S., provides the following criminal penalties for human trafficking offenses:²⁰

- *Using coercion for labor or services* is a first degree felony ranked in Level 7 of the Chart;²¹
- *Using coercion for commercial sexual activity* is a first degree felony ranked in Level 8 of the Chart;²²
- *Commercial sexual activity involving a child 15 years of age or older but less than 18 years of age* is a first degree felony, punishable by life, ranked in Level 9 of the Chart.²³
- *Commercial sexual activity involving a child under the age of 15* is a life felony ranked in Level 10 of the Chart.²⁴

¹⁴ Sections 921.002-921.0027, F.S.

¹⁵ Section 921.0022, F.S.

¹⁶ Section 921.0024, F.S.

¹⁷ The maximum penalty for the felony degree is generally prescribed in s. 775.082, F.S. An exception is when the scored lowest permissible sentence exceeds the maximum penalty prescribed in s. 775.082, F.S. In this case, the scored lowest permissible sentence for the primary offense becomes both the minimum and maximum penalty for the primary offense.

¹⁸ Mandatory minimum terms are an exception to general sentencing under the Code. "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence. If the lowest permissible sentence exceeds the mandatory sentence, the requirements of the ... Code and any mandatory minimum penalties apply." Rule 3.704(d)(26), Florida Rules of Criminal Procedure.

¹⁹ The maximum penalty for the felony degree is generally prescribed in s. 775.082, F.S. An exception is when the scored lowest permissible sentence exceeds the maximum penalty prescribed in s. 775.082, F.S. In this case, the scored lowest permissible sentence for the primary offense becomes both the minimum and maximum penalty for the primary offense.

²⁰ Each instance of human trafficking constitutes a separate crime, and authorizes separate punishment for each crime. Section 787.06(3), F.S. (flush left language at the end of the subsection). 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 775.21(4)(a), 943.0435(1)(a)1., 944.606(1)(b), and 944.607(1)(a)1., F.S.

²¹ Sections 787.06(3)(a) and 921.0022(3)(g), F.S.

²² Sections 787.06(3)(b) and 921.0022(3)(h), F.S.

²³ Sections 787.06(3)(g) and 921.0022(3)(i), F.S. The State does not need to prove that the defendant knew that the person had not attained the age of 18 years, if the defendant had a reasonable opportunity to observe the person who was subject to human trafficking.

²⁴ Sections 787.06(3)(h) and 921.0022(3)(j), F.S. The State does not need to prove that the defendant knew that the person had not attained the age of 15 years, if the defendant had a reasonable opportunity to observe the person who was subject to human trafficking.

- *Using coercion for labor or services of an unauthorized alien* is a first degree felony ranked in Level 8 of the Chart.²⁵
- *Using coercion for commercial sexual activity of an unauthorized alien* is a first degree felony ranked in Level 9 of the Chart.²⁶
- *Using coercion for labor or services by transferring or transporting a person from outside Florida to within Florida* is a first degree felony ranked in Level 7 of the Chart.²⁷
- *Using coercion for commercial sexual activity by transferring or transporting a person from outside Florida to within Florida* is a first degree felony ranked in Level 8 of the Chart.²⁸

Section 787.06(4), F.S., provides that it is a first degree felony ranked in Level 9 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.²⁹

Effect of the Bill

The bill enhances the penalties for the above-described human trafficking offenses that involve minors by removing the element of coercion, increasing the felony degree of the offenses, and/or by ranking offenses in a higher level in the Chart. These changes are described below:

- *Human trafficking for labor or services of a child under the age of 18* remains a first degree felony but is ranked in Level 8 of the Chart (currently it's a Level 7 offense and requires coercion).
- *Human trafficking for commercial sexual activity of a child under the age of 18 or any person who is mentally defective³⁰ or mentally incapacitated³¹* is a life felony ranked in Level 10 of the Chart (currently it's a first degree felony ranked in Level 9 if the child is between 15 and 18 years of age, and a life felony ranked in Level 10 if the child is under 15 years of age).
- *Human trafficking for labor or services of a child under the age of 18 who is an unauthorized alien* is a first degree felony ranked in Level 9 of the Chart (currently it's a Level 8 offense and requires coercion).
- *Human trafficking for labor or services by transferring or transporting a child under the age of 18 from outside Florida to within Florida* is a first degree felony ranked in Level 8 of the Chart (currently it's a Level 7 offense and requires coercion).
- *Human trafficking for commercial sexual activity by transferring or transporting a child under the age of 18 from outside Florida to within Florida* is a first degree felony punishable by life imprisonment and ranked in Level 9 of the Chart (currently it's a first degree felony ranked in Level 8 and requires coercion).

The bill also amends s. 787.06(4), F.S. (prohibiting the sale of minors knowing the minor will be subject to human trafficking), to increase the penalty to a life felony (from a first degree felony) and rank the offense in Level 10 of the Chart (from a Level 9).

The bill specifies 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.

The bill also creates a new offense making it a third degree felony for a person to permanently brand, or directs to be branded, a human trafficking victim. "Permanently brand" is defined as "a mark on the

²⁵ Sections 787.06(3)(c) and 921.0022(3)(h), F.S.

²⁶ Sections 787.06(3)(d) and 921.0022(3)(i), F.S.

²⁷ Sections 787.06(3)(e) and 921.0022(3)(g), F.S.

²⁸ Sections 787.06(3)(f) and 921.0022(3)(h), F.S.

²⁹ Section 921.0022(3)(i), F.S.

³⁰ Section 794.011(1)(b), F.S., defines "mentally defective" as "a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct."

³¹ Section 794.011(1)(c), F.S., defines "mentally incapacitated" as "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."

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."

Statute of Limitations

Statutes of limitations set forth time limitations for commencing criminal prosecutions and civil actions. In *State v. Hickman*,³² the court explained that:

Statutes of Limitation are construed as being acts of grace, and as a surrendering by the sovereign of its right to prosecute or of its right to prosecute at its discretion, and they are considered as equivalent to acts of amnesty. Such statutes are founded on the liberal theory that prosecutions should not be allowed to ferment endlessly in the files of the government to explode only after witnesses and proofs necessary to the protection of accused have by sheer lapse of time passed beyond availability. They serve, not only to bar prosecutions on aged and untrustworthy evidence, but also to cut off prosecution for crimes a reasonable time after completion, when no further danger to society is contemplated from the criminal activity.

Similarly, in *State v. Garofalo*, 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."³³

Section 775.15, F.S., sets forth the following general time limitations for commencing criminal prosecutions:

- For a capital felony, a life felony, or a felony resulting in death, there is no time limitation;
- For a first degree felony, there is a four-year limitation; and
- For any other felony, there is a three-year limitation.

The general time limitations described above currently apply to human trafficking offenses.

Effect of the Bill

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

Prostitution

Chapter 796, F.S., contains the following offenses relating to prostitution, with penalties that range from second degree misdemeanors to first degree felonies:

- Section 796.03, F.S. (procuring persons under age of 18 for prostitution);
- Section 796.035, F.S. (selling or buying of minors into prostitution);
- Section 796.036, F.S. (reclassifying prostitution violations involving minors);
- Section 796.04, F.S. (forcing, compelling, or coercing another to become a prostitute);
- Section 796.05, F.S. (deriving support from the proceeds of prostitution);
- Section 796.06, F.S. (renting space to be used for lewdness, assignation, or prostitution);
- Section 796.07, F.S. (prohibiting prostitution and related acts);
- Section 796.08, F.S. (prostitution, HIV and sexually transmissible diseases); and
- Section 796.09, F.S. (creating a civil cause of action).

Effect of the Bill

The bill provides legislative intent that adults who involve children in any act prohibited under ch. 796, F.S., should not be prosecuted under ch. 796, F.S., but should rather be prosecuted under other criminal laws, such as, but not limited to, s. 787.06, F.S. (human trafficking), ch. 794, F.S. (sexual battery), ch. 800, F.S. (lewdness and indecent exposure), s. 810.145, F.S. (video voyeurism), ch. 827, F.S. (abuse of children), and ch. 847, F.S. (obscenity). Because of the infirmities of age, minors are

³² 189 So.2d 254, 262 (Fla. 2d DCA 1966).

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

unable to consent to an act of “prostitution,” and therefore, perpetrators of these acts should be prosecuted under laws designed to address forced acts of sexual abuse on children.

Since ch. 796, F.S., should not be used to prosecute crimes involving minors, the bill repeals the following provisions:

- Procuring person under age of 18 for prostitution;³⁴
- Selling or buying of minors into prostitution;³⁵ and
- Reclassifying prostitution violations involving minors.³⁶

Currently, s. 796.05, F.S., makes it a third degree felony ranked in Level 3 of the Chart for any person, with reasonable belief or knowing another person is engaged in prostitution, to live or derive support or maintenance in whole or in part from what is believed to be the earnings or proceeds of such person’s prostitution. The bill increases the penalties for violations of s. 796.05, F.S., as follows:

- A first offense is a second degree felony ranked in Level 5 of the Chart;
- A second offense is a first degree felony ranked in Level 7 of the Chart; and
- A third or subsequent offense is a first degree felony, with a mandatory minimum term of imprisonment of 10 years, ranked in Level 7 of the Chart.

The bill also increases the penalty for the following offenses from a second degree misdemeanor to a third degree felony:

- To own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution.³⁷
- To offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act.³⁸
- 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.³⁹
- 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.⁴⁰
- To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.⁴¹
- To aid, abet, or participate in any of the acts or things enumerated in this subsection.⁴²
- To purchase the services of any person engaged in prostitution.⁴³

The bill makes a second offense of any of the above-listed crimes a second degree felony (currently a second offense is a first degree misdemeanor). The bill makes a third or subsequent offense a first degree felony (current a third or subsequent offense is a third degree felony).

The bill also requires the court to assess a criminal penalty of \$5,000 for the above-listed crimes if the violation results in any judicial disposition other than acquittal or dismissal (current law imposes a \$5,000 civil fine, but only for a violation of s. 796.07(2)(f), F.S., which prohibits a person from soliciting another to commit prostitution). \$500 of the fine is allocated to pay administrative costs of drug court programs, and the remainder of the fine goes to the Operations and Maintenance Trust Fund of the Department of Children and Families for the purpose of funding safe houses and short-term safe houses. As a criminal fine, its collection can be enforced as part of the defendant’s criminal sentence.

³⁴ Section 796.03, F.S.

³⁵ Section 796.035, F.S.

³⁶ Section 796.036, F.S.

³⁷ Section 796.07(2)(a), F.S.

³⁸ Section 796.07(2)(b), F.S.

³⁹ Section 796.07(2)(c), F.S.

⁴⁰ Section 796.07(2)(d), F.S.

⁴¹ Section 796.07(2)(f), F.S.

⁴² Section 796.07(2)(h), F.S.

⁴³ Section 796.07(2)(i), F.S.

The bill also deletes a provision requiring persons charged a third or subsequent time with any offense in s. 796.07, F.S., to be offered admission into a pretrial intervention program or a substance abuse treatment program.

Expunged Records

Expunging Criminal History Records - Generally

Section 943.0585, F.S., sets forth procedures for expunging a criminal history record. When a criminal history record⁴⁴ is expunged, criminal justice agencies⁴⁵ other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record.⁴⁶ FDLE is required to retain expunged records.⁴⁷ Records that have been expunged are confidential and exempt from the public records law,⁴⁸ and it is a first degree misdemeanor⁴⁹ to divulge their existence.⁵⁰

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,⁵¹ petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.⁵²

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.⁵³ In order to receive a certificate, a person must:

- Submit to FDLE a written, certified statement from the appropriate state attorney or statewide prosecutor indicating that:
 - An indictment, information, or other charging document was not filed or issued in the case; or if filed, was dismissed or nolle prosequi by the state attorney or statewide prosecutor or was dismissed by a court of competent jurisdiction;
 - None of the charges related to the record the person wishes to expunge resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt; and
 - The criminal history record does not relate to a violation of specified offenses regardless of whether adjudication was withheld;⁵⁴

⁴⁴ 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.

⁴⁵ 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 the 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.

⁴⁶ Section 943.0585(4), F.S. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order

⁴⁷ *Id.*

⁴⁸ Section 943.0585(4)(c), F.S.

⁴⁹ 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.

⁵⁰ Section 943.0585(4)(c), F.S., requires FDLE to disclose expunged criminal history records to specified entities for specified purposes.

⁵¹ These include candidates for employment with a criminal justice agency; applicants for admission to the Florida Bar; those seeking a sensitive position involving direct contact with children, the developmentally disabled, or the elderly with the Department of Children and Family Services, Division of Vocational Rehabilitation within the Department of Education, the Agency 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.

⁵² Section 943.0585(4)(c), F.S.

⁵³ Chapter 1992-73, L.O.F.

⁵⁴ These offenses include: sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients, or the reporting of such sexual misconduct; luring or enticing a child; sexual battery; procuring a person under 18 years for prostitution; lewd, lascivious, or indecent assault upon a child, lewd or lascivious offenses committed on an elderly or disabled person; communications fraud; sexual performance by a child; unlawful distribution of obscene materials to a minor; unlawful activities involving computer pornography; selling or buying minors for the purpose of engaging in sexually explicit conduct; offenses by public officers and employees; drug trafficking; and other dangerous crimes such as arson, aggravated assault or battery, kidnapping, murder, robbery, home invasion robbery, carjacking, stalking, domestic violence, and burglary.

- Pay a \$75 processing fee;
- Submit a certified copy of the disposition of the record they wish to have expunged;
- Have never been adjudicated guilty or delinquent for committing a felony or misdemeanor specified in s. 943.051(3)(b), F.S.,⁵⁵ prior to the date of their application for the certificate;
- Have never been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity of the record they wish to have expunged;
- Have never had a prior sealing or expunction of criminal history record unless an expunction is sought for a record previously sealed for 10 years and the record is otherwise eligible for expunction;
- No longer be under any court supervision related to the disposition of the record they wish to have expunged; and
- Have previously obtained a court order sealing the record for a minimum of 10 years because adjudication was withheld or because all charges related to the record they wish to have expunged were not dismissed prior to trial, without regard to whether the outcome of the trial was other than an adjudication of guilt.⁵⁶

Once a petition to expunge is submitted, it is up to the court to decide whether the expunction is appropriate.⁵⁷

Expunging Human Trafficking Criminal History Records

Section 943.0583, F.S., authorizes a victim of human trafficking to petition the court for the expunction of any conviction 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.⁵⁸

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.⁵⁹ 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.⁶⁰

The court’s determination of the petition must be by a preponderance of the evidence.⁶¹ A determination made without official documentation must be made by a showing of clear and convincing evidence.⁶² If a court grants an expunction, criminal justice agencies with custody of the expunged record, except FDLE, must physically destroy the record.⁶³ Persons who have had their human trafficking criminal history records expunged may lawfully deny or fail to acknowledge the arrests that

⁵⁵ These offenses include: assault, as defined in s. 784.011, F.S.; battery, as defined in s. 784.03, F.S.; carrying a concealed weapon, as defined in s. 790.01(1), F.S.; unlawful use of destructive devices or bombs, as defined in s. 790.1615(1), F.S.; negligent treatment of children, as defined in s. 827.05, F.S.; assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b), F.S.; open carrying of a weapon, as defined in s. 790.053 F.S.; exposure of sexual organs, as defined in s. 800.03, F.S.; unlawful possession of a firearm, as defined in s. 790.22(5), F.S.; petit theft, as defined in s. 812.014(3), F.S.; cruelty to animals, as defined in s. 828.12(1), F.S.; arson, as defined in s. 806.031(1), F.S.; and unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115, F.S.

⁵⁶ The does not apply when a plea was not entered or all charges related to the record they wish to have expunged were dismissed prior to trial. Section 943.0585(2), F.S.

⁵⁷ Section 943.0585, F.S.

⁵⁸ Section 943.0583(1)(c), F.S.

⁵⁹ Section 943.0583(4), F.S.

⁶⁰ Section 943.0583(6), F.S.

⁶¹ Section 943.0583(3), F.S.

⁶² Section 943.0583(5), F.S.

⁶³ 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.

were expunged unless they are a candidate for employment with a criminal justice agency or a defendant in a criminal prosecution.⁶⁴

Effect of the Bill

The bill amends s. 943.0583, F.S., to expand provisions relating to the expunction of criminal history records for victims of human trafficking. The bill authorizes a victim of human trafficking to petition the court for the expunction of any criminal history record resulting from the arrest or filing of charges (not just a conviction) for an offense committed or reported to have been committed while he or she was a victim of human trafficking. If the victim of human trafficking whose criminal records are expunged was adjudicated not guilty by reason of insanity or was found to be incompetent to stand trial for the expunged charges, the expunction does not prevent:

- FDLE from entering the judgment or finding in state and national databases used to determine eligibility for the purchase of a firearm or to carry a concealed firearm; or
- Any governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm from accessing or using the record of the judgment or finding in the course of such agency's official duties.

B. SECTION DIRECTORY:

Section 1. Amends s. 450.021, F.S., relating to minimum age; general.

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

Section 3. Amends s. 775.15, F.S., relating to time limitations; general time limitations; exceptions.

Section 4. Amends s. 787.06, F.S., relating to human trafficking.

Section 5. Amends s. 775.082, F.S., relating to penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.

Section 6. Creates s. 796.001, F.S., relating to offenses by adults involving minors; intent.

Section 7. Repeals s. 796.03, F.S., relating to procuring person under age of 18 for prostitution; s. 796.035, F.S., relating to selling or buying of minors into prostitution; penalties; and s. 796.036, F.S., relating to violations involving minors; reclassification.

Section 8. Amends s. 796.05, F.S., relating to deriving support from the proceeds of prostitution.

Section 9. Amends s. 796.07, F.S., relating to prohibiting prostitution and related acts.

Section 10. Amends s. 943.0583, F.S., relating to human trafficking victim expunction.

Section 11. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 12. Amends s. 39.01, F.S., relating to definitions.

Section 13. Amends s. 90.404, F.S., relating to character evidence; when admissible.

Section 14. Amends s. 772.102, F.S., relating to definitions.

Section 15. Amends s. 775.0877, F.S., relating to criminal transmission of HIV; procedures; penalties.

Section 16. Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.

⁶⁴ Section 943.0583(8)(b), F.S.
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Section 17. Amends s. 787.01, F.S., relating to kidnapping; kidnapping of child under age 13, aggravating circumstances.

Section 18. Amends s. 787.02, F.S., relating to false imprisonment; false imprisonment of child under age 13, aggravating circumstances.

Section 19. Amends s. 794.056, F.S., relating to Rape Crisis Program Trust Fund.

Section 20. Amends s. 856.022, F.S., relating to loitering or prowling by certain offenders in close proximity to children; penalty.

Section 21. Amends s. 895.02, F.S., relating to definitions.

Section 22. Amends s. 938.085, F.S., relating to additional cost to fund rape crisis centers.

Section 23. Amends s. 938.10, F.S., relating to additional court cost imposed in cases of certain crimes.

Section 24. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 25. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 26. Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.

Section 27. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 28. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 29. Amends s. 948.013, F.S., relating to administrative probation.

Section 30. Amends s. 948.32, F.S., relating to requirements of law enforcement agency upon arrest of persons for certain sex offenses.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference met on March 25, 2014, and found the prison bed impact of this bill to be indeterminate. The bill increases penalties for current human trafficking offenses, primarily where the victim is under the age of 18. Since these are new penalties the number of offenders that will be sentenced to prison cannot be predicted. However, in FY 2013-14, no one was sentenced for any of the existing human trafficking offenses, so this impact will likely be insignificant. The increase of misdemeanor penalties for prostitution to felonies may result in an increase in prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill may have a negative jail bed impact in that it creates two new second degree misdemeanor offenses in the Child Labor Law.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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:

The bill may require FDLE to revise its rules relating to the expunction of records, however, adequate rulemaking authority appears to exist.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorable as a committee substitute. The proposed committee substitute revised the criminal penalties as provided in the bill as filed.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.