

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJ 18-03 Human Trafficking
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	10 Y, 0 N	MacNamara	Sumner

SUMMARY ANALYSIS

Human trafficking is the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploiting that person. Victims of human trafficking are young children, teenagers, men, and women, who are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.

Victims of human trafficking are often arrested and charged with crimes committed at the direction of their trafficker. The resulting criminal record for these victims acts as a barrier for victims seeking employment, housing, and other necessities for a normal life.

PCB CRJ 18-03 amends current law related to human trafficking. The bill provides a mandatory minimum sentence of 10 years for any person who engages in, attempts to engage in, or benefits from human trafficking:

- For labor or services of any child under the age of 18, including unauthorized aliens;
- Using coercion for commercial sexual activity or labor or services of an adult, including an unauthorized alien;
- For labor or services by the transfer or transport of any child under the age of 18 from outside Florida; and
- For commercial sexual activity in which any child under the age of 18, or which involves any person who is mentally defective or mentally incapacitated.

Additionally, the bill amends the definition of “adult theater” to clarify that strip clubs and similar establishments are within the scope of the Department of Business and Professional Regulation’s verification and inspection authority.

The bill also amends current law related to human trafficking victim expunction fees. Specifically, the bill prohibits clerks from assessing a filing fee, or any other fee or costs, for victims seeking expungement of a criminal record of crimes committed while a victim of human trafficking.

Lastly, the bill reenacts portions of current law to give effect to changes made by the bill.

The bill appears to have an indeterminate fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Human trafficking is a form of modern-day slavery. It is the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploiting that person.¹

Human trafficking is a public health issue that impacts individuals, families, and communities. Traffickers disproportionately target at-risk populations including individuals who have experienced or been exposed to other forms of violence, like child abuse and maltreatment, interpersonal violence and sexual assault, and community and gang violence, and individuals disconnected from stable support networks, like runaway and homeless youth, unaccompanied minors, and persons displaced during natural disasters.² It is estimated that as many as 300,000 American youth are currently at risk of becoming victims of commercial sexual exploitation.³ 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 worldwide are in forced labor, bonded labor, and commercial sexual servitude at any given time.⁴

Sex trafficking, one type of human trafficking, can occur in many different settings. For example, sex trafficking victims are often forced into prostitution or into work at a strip club or gentleman's club.⁵ In Florida, 429 arrests were made for human trafficking from 2014 through 2017.⁶

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 various crimes. For sex trafficking victims these crimes are frequently prostitution charges, but also include other charges such as weapons, drugs, financial crimes, and identity theft.⁷ Labor traffickers, like sex traffickers, also benefit from forcing a victim to commit illegal acts such as selling or cultivating drugs or, commonly at the U.S. border, forcing individuals to be drug mules or bring people into the country illegally.⁸ Minors who are trafficked are often charged with offenses such as truancy and running away.⁹

Criminal charges create high barriers for victims of human trafficking in terms of finding employment and establishing stability and independence. In 2016, the National Survivor Network published a survey of their members showing that 90% of respondents had criminal convictions.¹⁰

¹ S. 787.06(2)(d), F.S.

² Administration for Children & Families, *Fact Sheet: Human Trafficking*, available at: https://www.acf.hhs.gov/sites/default/files/otip/fact_sheet_human_trafficking_fy18.pdf (last accessed January 10, 2018).

³ *OJP Fact Sheet*, Office of Justice Programs, U.S. Department of Justice, December 2011, available at: http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html.

⁴ U.S. Department of State, *The 2013 Trafficking in Persons (TIP) Report*, June 2013. <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>

⁵ American Bar Association, *Trafficking FAQs.*, available at:

https://www.americanbar.org/groups/human_rights/projects/task_force_human_trafficking/faqs.html

⁶ Email from Ronald Draa, Florida Department of Law Enforcement. (December 8, 2017) (on file with the Criminal Justice Subcommittee).

⁷ American Bar Association, *Post-Conviction Advocacy for Survivors of Human Trafficking: A Guide for Attorneys*, p. 4-5, available at: https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/SRP/practice-guide.authcheckdam.pdf (last accessed January 10, 2018).

⁸ Id.

⁹ Id.

¹⁰ National Survivors Network Member Survey On the Impact of Criminal Arrest and Detention on Survivors of Human Trafficking (January 2016), available at: <http://nationalsurvivornetwork.org>.

Effect of Proposed Changes

Mandatory Minimum Sentences

A mandatory minimum sentence requires a judge to impose a certain sentence length regardless of the circumstances or mitigating factors involved with the crime. Current law does not provide a mandatory minimum for any human trafficking crime.

PCB CRJ 18-03 establishes a 10-year mandatory minimum sentence of imprisonment for any person who engages in, attempts to engage in, or benefits from human trafficking:

- For labor or services of any child under the age of 18, including unauthorized aliens,
- Using coercion for commercial sexual activity or labor or services of an adult, including an unauthorized alien,
- For labor or services who does so by the transfer or transport of any child under the age of 18 from outside this state to within the state, and
- For commercial sexual activity in which any child under the age of 18, or which involves any person who is mentally defective or mentally incapacitated.¹¹

Department of Business and Professional Regulation Inspection Authority

The Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating certain businesses and professions under current law. Under s. 450.045, F.S., DBPR and law enforcement agencies are required to obtain, and verify, proof of age and identification for employees or independent contractors of “adult theaters” as defined in s. 847.001(2)(b), F.S. Furthermore, DBPR and its agents have the authority to enter an adult theater during operating hours, unannounced and without prior notice, to inspect and have access to age verification documents and other records kept on file by the adult theater.

PCB CRJ 18-03 amends the definition of “adult theater” under s. 847.001(2)(b), F.S., to clarify that strip clubs and similar establishments are within the scope of “adult theater” for purposes of DBPR’s verification and inspection authority. The following language is added to the definition:

...or any business that features a person who engages in specific sexual activities for observation by a patron, and which restricts or purports to restrict admission to adults only.

Human Trafficking Victim Criminal Record Expunction

Section 943.0583, F.S., authorizes a victim of human trafficking to petition the court for the expunction of a criminal history record relating to 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.¹²

To receive the expunction, a victim of human trafficking must petition the court of original jurisdiction over the crime sought to be expunged.¹³ 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.¹⁴ The petition must include:

¹¹ Current law provides that s. 787.06(3)(g), F.S., is a life felony. However, s. 775.082(3)(a)6, F.S., related to penalties and sentencing structure, uses the term “may” when providing sentencing instructions for that specific crime. As such, the bill imposes a mandatory minimum in the event a court interprets a statute to mean that a life sentence is not mandatory.

¹² S. 943.0583(1)(c), F.S.

¹³ S. 943.0583(2), F.S.

¹⁴ S. 943.0583(4), F.S.

- A sworn statement attesting that the victim is eligible for 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.¹⁵

A determination of a petitioner's status as a human trafficking victim without official documentation must be made by a showing of clear and convincing evidence.¹⁶ If a court grants an expunction, criminal justice agencies with custody of the expunged record, except FDLE, must physically destroy the record.¹⁷ 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.¹⁸

PCB CRJ 18-03 prohibits a clerk from assessing the \$42 filing fee, or any other fee or costs incurred by seeking expungement¹⁹, for victims of human trafficking seeking criminal record expungement under s. 943.0583, F.S. Current FDLE practice similarly waives the department's \$75 expunction certificate fee for victims of human trafficking.

Reenactments

Lastly, the bill reenacts ss. 847.001, 450.021, 450.045, 943.0582, 943.0585, 943.059, and 961.06, F.S., to give effect to the changes made in the bill.

B. SECTION DIRECTORY:

Section 1: Amends s. 787.06, F.S., relating to human trafficking.

Section 2: Amends s. 847.001, F.S., relating to definitions.

Section 3: Amends s. 943.0583, F.S., relating to human trafficking victim expunction.

Section 4: Reenacts s. 847.001, F.S., relating to definitions.

Section 5: Reenacts s. 450.021, F.S., relating to minimum age; general.

Section 6: Reenacts s. 450.045, F.S., relating to proof of identity and age; posting of notices.

Section 7: Reenacts s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.

Section 8: Reenacts s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 9: Reenacts s. 943.059, F.S., relating to court-ordered sealing of criminal history records.

Section 10: Reenacts s. 961.06, F.S., relating to compensation for wrongful incarceration.

Section 11: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on state government. Specifically, the Department of Corrections may see an increase in the number of prison beds for offenders who are

¹⁵ S. 943.0583(6), F.S.

¹⁶ S. 943.0583(5), F.S.

¹⁷ S. 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 must be made available to criminal justice agencies for their respective criminal justice purposes. S. 943.0583(10)(a), F.S.

¹⁸ S. 943.0583(8)(b), F.S.

¹⁹ See s. 28.24(13)-(28), F.S., for examples of permitted fees or costs clerks may assess in the performance of various duties.

subject to the mandatory minimum sentences for certain human trafficking crimes established in the bill. Additionally, DBPR may see an increase in workload to inspect strip clubs and other establishments now covered under the definition of "adult theater."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an indeterminate insignificant impact on local government revenues. Court clerks are prohibited from assessing filing fees when expunging the criminal record of a human trafficking victim.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES