

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1962

SPONSOR: Senators Wasserman Schultz and Smith

SUBJECT: Sex Trafficking

DATE: April 19, 2004                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill creates a new section that provides that any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of the minor, or offers to sell or otherwise transfer custody of the minor, with knowledge that, as a consequence of the sale or transfer, force, fraud, or coercion will be used to cause the minor to engage in prostitution or otherwise participates in the trade of sex trafficking, commits sex trafficking, a first degree felony.

The bill also creates another section that 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, a second degree felony, unless the victim is under the age of 14 or the offense results in a death, in which case it is a first degree felony.

The bill also amends the definitions section of the Florida RICO statute to add these new offenses as predicate offenses for the purpose of racketeering prosecutions.

This bill substantially amends s. 895.02, F.S., creates ss. 796.035 and 796.045, F.S., and reenacts ss. 16.56(1)(a), 27.34(1), 655.50(3)(g), 896.101(2)(g), and 905.34(3), F.S.

## II. Present Situation:

### Relevant Florida Law

Present Florida law does not identify any crime as “sex trafficking.”

Section 796.03, F.S., provides that it is a second degree felony to procure a minor for prostitution or cause the minor to be prostituted.

Section 796.04, F.S., provides that it is a third degree felony to force, compel, or coerce another person to become a prostitute.

Section 796.05, F.S., provides that it is a third degree felony 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.

Section 796.06, F.S., provides that it is a second degree misdemeanor (a first degree misdemeanor for a second or subsequent violation) to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used for the purpose of lewdness, assignation, or prostitution.

Section 796.07, F.S., provides, in part, that it is unlawful to: own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution; offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act; 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; 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; solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation; or aid, abet, or participate in any of these acts.

A first violation is a second degree misdemeanor; a second violation is a first degree misdemeanor; a third or subsequent violation is a third degree felony.

Section 827.04, F.S., provides, in part, that it is a first degree misdemeanor to: commit any act which causes, tends to cause, encourages, or contributes to a child becoming a delinquent or dependent child or a child in need of services; or induces or endeavors to induce, by act, threat, command, or persuasion, a child to commit or perform any act, follow any course of conduct, or live in a manner that causes or tends to cause such child to become or to remain a dependent or delinquent child or a child in need of services.

Section 827.071, F.S., provides, in part, that it is a second degree felony for any person who, knowing the character and content thereof, employs, authorizes, or induces a minor to engage in

a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. It is also a second degree felony for any person who, knowing the character and content thereof, to produce, direct, or promote any performance which includes sexual conduct by a child less than 18 years of age.

Section 847.0145, F.S., provides that it is first degree felony for any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of the minor, or offers to sell or otherwise transfer custody of the minor, either: (1) with knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or (2) with intent to promote either the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct or the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

Section 847.0145, F.S., provides that it is a first degree felony for any person to purchase or otherwise obtain custody or control of a minor, or offer to purchase or otherwise obtain custody or control of a minor, either: (1) with knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or (2) with intent to promote either the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct or the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

Section 800.04, F.S., provides, in part, that a person who encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity commits a second degree felony.

### **Relevant Federal Law**

The Victims of Trafficking and Violence Protection Act of 2000, Pub L. No. 106-386 (effective October 28, 2000), supplemented existing federal laws applicable to human trafficking including those passed to enforce the Thirteenth Amendment (proscribing slavery and involuntary servitude). The Act is the result of coordinated efforts between the FBI, INS, Department of Labor and other agencies to address domestic and global trafficking of persons, primarily women and children.

The Act provides as follows:

- Creates new laws that criminalize trafficking with respect to slavery, involuntary servitude, peonage or forced labor;
- Permits prosecution where nonviolent coercion is used to force victims to work in the belief they would be subject to serious harm;
- Permits prosecution where the victim's service was compelled by confiscation of documents such as passports or birth certificates;

- Increases prison terms for all slavery violations from 10 years to 20 years and adds life imprisonment where the violation involves the death, kidnapping, or sexual abuse of the victim;
- Requires courts to order restitution and forfeiture of assets upon conviction;
- Enables victims to seek witness protection and other types of assistance;
- Gives prosecutors and agents new tools to get legal immigration status for victims of trafficking during investigation and prosecution.

Various other sections of the United States Code address slavery and indentured servitude:

**Title 18, Part I, Ch. 77, Sec. 1581(a):** provides that any person who holds or returns any person to a condition of peonage (debt servitude), or arrests any person intending to place or return him or her to a condition of peonage, is fined under Title 18 or imprisoned not more than 20 years, or both. If death results from the violation of sec. 1581, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant is fined under Title 18 or imprisoned for any term of years or life, or both. Subsection (b) of sec. 1581 provides that whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of sec. 1581 is liable for the penalties prescribed in subsection (a).

**Title 18, Part I, Ch. 77, Sec. 1583:** provides that any person who kidnaps or carries away any other person, with the intent for them to be sold into involuntary servitude, or held as a slave; or entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he or she be made or held as a slave, or sent out of the country to be so made or held is fined under Title 18 or imprisoned not more than 20 years, or both. If death results from the violation of sec. 1583, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant is fined under Title 18 or imprisoned for any term of years or life, or both.

**Title 18, Part I, Ch. 77, Sec. 1584:** provides that any person who knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, is fined under Title 18 or imprisoned not more than 20 years, or both. If death results from the violation of sec. 1584, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant is fined under Title 18 or imprisoned for any term of years or life, or both.

**Title 18, Part I, Ch. 77, Sec. 1589:** provides that any person who knowingly provides or obtains the labor or services of a person: (1) by threats of serious harm to, or physical restraint against, that person or another person; (2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or (3) by means of the abuse or threatened abuse of law or the legal process, is fined under Title 18 or imprisoned not more than 20 years, or both. If death results from the violation of sec. 1589, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant is fined under Title 18 or imprisoned for any term of years or life, or both.

**Title 18, Part I, Ch. 77, Sec. 1590:** provides that any person who knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of ch. 77 is fined under Title 18 or imprisoned not more than 20 years, or both. If death results from the violation of sec. 1590, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant is fined under Title 18 or imprisoned for any term of years or life, or both.

**Title 18, Part I, Ch. 77, Sec. 1591(a):** provides that any person who knowingly: (1) in or affecting interstate commerce, recruits, entices, harbors, transports, provides, or obtains by any means a person; or (2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing that force, fraud, or coercion will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, is punished as provided in subsection (b). Subsection (b) of sec. 1591 provides that the punishment for an offense under subsection (a) is: (1) if the offense was effected by force, fraud, or coercion or if the person transported had not attained the age of 14 years at the time of such offense, by a fine under Title 18 or imprisonment for any term of years or for life, or both; or (2) if the offense was not so effected, and the person transported had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under Title 18 or imprisonment for not more than 20 years, or both.

**Title 18, Part 1, Ch. 96, Sec. 1961:** provides, in part, that the definition of “racketeering activity” includes any act which is indictable under sections 1581-1588 (relating to peonage and slavery).

### **Reports on Human Trafficking**

The National Institute of Justice reports:

The sale and distribution of trafficked humans in the U.S. is a global, regional, and national phenomenon. The largest influx of humans trafficked to the U.S. are coming from the less developed regions of the world. The most popular transit route for Chinese, South Americans and South Asians is through Central America and Mexico. Panama is a major transit point for migrants coming from Columbia, Ecuador, Peru, Cuba, India and China. In addition, South Africa has also become a major transit point into the United States. The major points of entry...are located in...Texas, Southern California...Arizona, and areas of New Mexico. Other newly emerging points of entry include Atlanta, Houston, Orlando and Washington, D.C.

Another aspect critical to understanding the role of demand in this market is the willingness of many U.S. employers to hire undocumented workers. For example, the illegal job market is flourishing in Florida and the INS estimates that about 350,000 illegal immigrants are currently living there. The U.S. Congress passed the Illegal Immigration Reform and Immigration Responsibility Act of 1996. This law significantly expanded potential sentences for individuals convicted of alien trafficking, and doubled the maximum penalty for alien smuggling to 10 years. The goal of the anti-trafficking

strategy of the INS is to deter and disrupt alien smuggling at all levels of operation, including overseas, at the border, and in the interior of the United States, as well as to dismantle trafficking operations. In accomplishing this goal, the INS has utilized a number of investigative techniques. These techniques include the application of expanded asset forfeiture laws; the use of wire intercepts; the establishment of an undercover proprietary business; and, the use of the Racketeer Influenced and Corrupt Organizations Act (RICO), which now designates alien smuggling and immigration-related visa fraud as RICO predicate offenses.<sup>1</sup>

The following was recently reported by CNN regarding human trafficking and sex trafficking in Florida:

Human traffickers bring thousands of people into the United States each year and Florida is believed to be one of the top three destinations, along with New York and Texas, according to the Center for the Advancement of Human Rights at Florida State University.

Although there have been several prosecutions of human trafficking in Florida, no one knows how many people in Florida are under the control of traffickers, said Terry Coonan, the center's executive director.

In south Florida, federal prosecutions have indicated hundreds of farm workers were victims of human trafficking, and a forced prostitution ring identified as many as 40 young women and girls brought from Mexico. The center also cited a case of "domestic servitude" in southwest Florida.

But the problem is not limited to those areas or those industries, according to Robin Thompson, director of the research project.

"All you have to do is look where cheap labor is required and where there is a potential for labor exploitation, which pretty much can put you anywhere in our state," Thompson said.

The center organized a "working group" of advocates and law enforcement officials to study the issue. The project was funded by a federal grant under a 2000 law designed to increase protections for victims of human trafficking.

The center's report emphasized that not all victims of human trafficking are illegal immigrants. Many enter the United States legally but because of their poverty or inability to speak English are exploited by traffickers.

And some victims are Americans, Thompson said, pointing to the homeless, addicted and runaways as potential victims for traffickers.

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<sup>1</sup> James O. Finckenauer and Jennifer Schrock, *Human Trafficking: A Growing Criminal Market in the U.S.*, International Center, National Institute of Justice, U.S. Department of Justice website: [www.ojp.usdoj.gov/nij/international/ht.html](http://www.ojp.usdoj.gov/nij/international/ht.html) (2000).

“The greater the awareness, the more likely these cases will be reported and prosecuted,” Coonan told reporters. “This is almost an invisible crime because the victims are kept out of the public eye. We need to crack this code of silence.

“Report: Modern-day slavery alive and well in Florida,” *CNN.com* (February 24, 2004). The report referred to in the article is “Florida Responds to Human Trafficking,” Center for the Advancement of Human Rights, Florida State University (Fall 2003)

### III. Effect of Proposed Changes:

Senate Bill 1962 creates s. 796.035, F.S., to provide that any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of the minor, or offers to sell or otherwise transfer custody of the minor, with knowledge that, as a consequence of the sale or transfer, force, fraud, or coercion will be used to cause the minor to engage in prostitution or otherwise participates in the trade of sex trafficking, commits sex trafficking, a first degree felony.

The bill also creates s. 796.045, F.S., to provide 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, a second degree felony, unless the victim is under the age of 14 or the offense results in a death, in which case it is a first degree felony.

The bill also amends s. 895.02, F.S., the definitions section of the Florida RICO statute to add these new offenses as predicate offenses for the purpose of racketeering prosecutions. A defendant can be convicted of both the sex trafficking crime and a RICO offense in which the sex trafficking crime is a predicate offense. This does not violate the constitutional protection against double jeopardy. *Gross v. State*, 728 So.2d 1206, 1208 (Fla. 4th DCA 1999). The predicate offense is not a lesser included offense of the RICO offense. *Id.* The gravamen of a RICO offense is a “pattern of racketeering activity,” which means “engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that are otherwise interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the effective date of [the RICO Act] and that the last of such incidents occurred within 5 years after a prior incident of racketeering conduct.” ss. 895.02(4) and 895.03(1), F.S. A RICO violation (under s. 895.03, F.S.) is a first degree felony. s. 895.04, F.S.

The bill also reenacts ss. 16.56(1)(a), 27.34(1), 655.50(3)(g), 896.101(2)(g), and 905.34(3), F.S., which relate to the authority of the Office of Statewide Prosecution to investigate and prosecute certain offenses, the contribution of funds by counties and municipalities towards salaries of assistant state attorneys, the Florida Control of Money Laundering in Financial Institutions Act, the Florida Money Laundering Act, and the subject matter jurisdiction of the statewide grand jury, respectively, to incorporate the amendment to s. 895.02, F.S., in references thereto.

The bill takes effect October 1, 2004, and applies to offenses committed on or after that date.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference estimates that the bill is likely to have an insignificant prison bed impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The same elements required to prove the crime of sex trafficking may already exist for certain other crimes provided for in current law, such as Sections 796.03 and 796.04, F.S., which prohibit forcing a minor into prostitution and procurement of a person into prostitution. Charging a defendant under both provisions may bring a constitutional challenge based on double jeopardy. The Supreme Court in *United States v. Dixon* set out the application of the Blockburger, or the same elements test. The same elements test provides that the prohibition against double jeopardy does not apply where there are two distinct offenses and each offense requires proof of fact that the other does not.<sup>2</sup> Likewise, charging twice for the same crime, as demonstrated by the prosecution proving the same elements for both crimes may be

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<sup>2</sup> 509 U.S. 688, 703 (1993).



unconstitutional.<sup>3</sup> Therefore, to the extent that this bill provides punishment based on the same elements in this crime as well as one in existing law, the prosecution may be prohibited from charging under both, as limited by *Blockburger*.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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<sup>3</sup> See, generally, *Blockburger v. United States*, 284 U.S. 299 (1932).