

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Human Trafficking: In 2000, Congress passed the “Victims of Trafficking and Violence Protection Act of 2000” and published findings including the following¹:

As the 21st century begins, the degrading institution of slavery continues throughout the world. Trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today. At least 700,000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year.

Many of these persons are trafficked into the international sex trade, often by force, fraud or coercion. The sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominately women and girls, involving activities related to prostitution, pornography, sex tourism, and other commercial sexual services. The low status of women in many parts of the world has contributed to a burgeoning of the trafficking industry.

Trafficking in persons is not limited to the sex industry. This growing transnational crime also includes forced labor and involves significant violations of labor, public health, and human trafficking rights standards worldwide.

In June of 2003, the Department of State issued a report which estimated that approximately 800,000 - 900,000 people are trafficked annually across international borders and approximately 20,000 of these people are trafficked into the United States.² The report indicated that this number does not include people who are trafficked within the country.³

As part of the Victims of Trafficking and Violence Protection Act, Congress created 18 U.S.C. 1591 which prohibits sex trafficking. The section makes it a felony to recruit, entice, harbor, transport or provide another person knowing that force, fraud or coercion will be used to cause the person to engage in a “commercial sex act”.

Selling or Buying of Minors: Section 847.0145, F.S. makes it a first degree felony for any parent, legal guardian, or other person having custody or control of a minor to sell or otherwise transfer custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, either:

¹ Public Law 106-386, sec. 102.

² <http://www.state.gov/documents/organization/21555.pdf>

³ : The Center for the Advancement of Human Rights at Florida State University recently released a report entitled *Florida Responds to Human Trafficking* <http://www.cahr.fsu.edu/the%20report.pdf>

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:
 - a. The engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or
 - b. 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

This section also makes it a first degree felony to purchase or otherwise obtain custody or control of a minor for the purposes listed above.

Section 63.212 makes it a third degree felony to willfully and with criminal intent to sell or surrender, or to arrange for the sale or surrender of, a minor to another person for money or anything of value or to receive such minor child for such payment or thing of value.

Prostitution: Chapter 796, Florida Statutes contains several provisions relating to prostitution. Section 796.03 makes it a second degree felony to procure a person under the age of 18 for prostitution; section 796.04 makes it a third degree felony to force, compel or coerce another person to become a prostitute and s. 796.05 makes it a third degree felony to derive support from the proceeds of prostitution. Section 796.07 makes it a second degree misdemeanor to engage in activities related to prostitution including:

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

A second violation of an offense listed above is a first degree misdemeanor and a third violation is a third degree felony.

Provisions of HB 865: HB 865 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. The offense is a first degree felony if it is committed against a person who is under 14 years of age or if the offense results in death. The newly created offense is distinguishable from the offenses described in section 796.07, F.S., discussed above, because it will require proof that the offender obtained the person knowing that force, fraud or coercion would be used to cause that person to engage in prostitution. The offenses listed in s. 796.07 do not require proof of force, fraud or coercion.

The bill also provides that it is a first degree felony for any parent, legal guardian, or other person having custody or control of a minor to sell, or offer to sell or otherwise transfer custody of a 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 participate in the trade of sex trafficking.

The bill also amends section 895.02, to expand the definition of racketeering activity contained in the Racketeer Influenced and Corrupt Organization (RICO) Act to include the offenses created by the bill. The definition currently refers to offenses related to prostitution.

C. SECTION DIRECTORY:

Section 1: Creates s. 796.035, F.S., relating to buying or selling minors into sex trafficking or prostitution.

Section 2: Creates s. 796.045, F.S.; relating to sex trafficking.

Section 3: Amends s. 895.02, F.S., amending definition of "racketeering activity" included in RICO act.

Section 4: Reenacts s. 16.56(1)(a), F.S. for the purpose of incorporating the amendment to section 895.02, F.S. by reference.

Section 5: Reenacts s. 27.34(1), F.S. for the purpose of incorporating the amendment to section 895.02, F.S. by reference.

Section 6: Reenacts s. 655.50(3)(g), F.S. for the purpose of incorporating the amendment to section 895.02, F.S. by reference.

Section 7: Reenacts s. 896.101(2)(g), F.S. for the purpose of incorporating the amendment to section 895.02, F.S. by reference.

Section 8: Reenacts s. 905.34, F.S. for the purpose of incorporating the amendment to section 895.02, F.S. by reference.

Section 9: Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has not met to consider the prison bed impact on this bill on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.