

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.)

Prepared By: Justice Appropriations Committee

BILL: CS/CS/SB 250

INTRODUCER: Justice Appropriations Committee, Judiciary Committee, Senator Margolis and others

SUBJECT: Human Trafficking

DATE: April 4, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Maclure</u>	<u>Maclure</u>	<u>JU</u>	Fav/CS
3.	<u>Butler</u>	<u>Sadberry</u>	<u>JA</u>	Fav/CS
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill expands the scope of the state’s criminal prohibition against human trafficking by including additional types of activity that can constitute “financial harm” and thereby form a basis for commission of the offense. Specifically, human trafficking could occur if the intent were for financial harm to be obtained from the trafficked person by:

- Extortionate extension of credit;
- Loan sharking, as defined in s. 687.071, F.S.; or
- Employment contracts that violate the statute of frauds, as provided in s. 725.01, F.S.

This bill expands the scope of the state’s criminal prohibition against human trafficking by including additional types of activity that can constitute “forced labor or services” and thereby form a basis for commission of the offense. Specifically, human trafficking could occur if the intent were for labor or services to be obtained from the trafficked person by:

- Fraud or coercion;
- Isolating a person without lawful authority or against the person’s will;
- Using lending practices under which the labor or services are pledged as security for the debt but are not applied toward liquidation of the debt; and
- Destroying, concealing, removing, confiscating, withholding, or possessing a person’s actual or purported government identification documents.

The bill also makes attempted human trafficking an equal offense (second-degree felony) to completed human trafficking, and makes it a second-degree felony for a person to knowingly benefit financially from human trafficking.

In other changes related to human trafficking, the bill:

- Provides that a person injured as a result of certain criminal activity involving human trafficking has a civil cause of action for three times the actual damages the person sustained;
- Specifies that, as an alternative to that cause of action, a person who is a victim of human trafficking or sex trafficking may pursue a cause of action for three times the amount of profit gained from the human trafficking or sex trafficking, and in any such action is entitled to minimum damages in the amount of \$200, and reasonable attorney's fees and court costs in the trial and appellate courts;
- Provides for the prosecution and punishment of racketeering activity that involves human trafficking;
- Authorizes the Office of Statewide Prosecution to investigate and prosecute racketeering activity that involves human trafficking in multi-jurisdictional cases;
- Provides for the prosecution and punishment of financial transactions and other activities related to proceeds from racketeering activity that involves human trafficking;
- Provides that the subject matter jurisdiction of a statewide grand jury includes racketeering activity that involves human trafficking;
- Provides legislative findings and intent relating to human trafficking.

This bill substantially amends the following sections of the Florida Statutes: 787.06, 772.102, 772.104, and 895.02. The bill also reenacts portions of, or the whole of, the following sections: 16.56, 655.50, 896.01, and 905.34.

II. Present Situation:

Florida Penalty for Human Trafficking

Section 787.06, F.S., provides that a person commits a second-degree felony¹ if he or she knowingly engages in human trafficking with the intent that the trafficked person engage in forced labor or services. The section defines "human trafficking" as "transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport." The term "forced labor or services" is defined as labor or services obtained from a person by using or threatening to use physical force against that person or another person, or by restraining or confining or threatening to restrain or confine that person or another person without lawful authority and against her or his will.

Florida's Civil Remedies for Criminal Practices Act

Chapter 772, F.S., is known as Florida's "Civil Remedies for Criminal Practices Act." Section 772.103, F.S., provides that it is unlawful for any person:

- Who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of criminal activity or through the collection of an unlawful debt to use or invest,

¹ A person who commits a second-degree felony may be sentenced to up to 15 years in state prison. *See* s. 775.082, F.S.

- whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- Through a pattern of criminal activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
 - Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity or the collection of an unlawful debt.
 - Conspire or endeavor to violate any of the previously described provisions.

Section 772.102, F.S., defines “criminal activity” as committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of the offenses specified in that section, such as homicide and kidnapping.

Section 772.104, F.S., provides that any person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of the provisions of s. 772.103, F.S., shall have a cause of action for three times the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of \$200, and reasonable attorney’s fees and court costs in the trial and appellate courts.

Florida’s RICO Act

Sections 895.101-895.06, F.S., are known as the “Florida RICO (Racketeer Influenced and Corrupt Organization) Act.” Section 895.03, F.S., provides that it is unlawful for any person:

- Who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- Conspire or endeavor to violate any of the previously described provisions.

Section 895.02, F.S., defines “racketeering activity” as committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of the offenses specified in that section, such as homicide and kidnapping.

Section 895.04, F.S., provides that a person engaged in activity in violation of s. 895.03, F.S., commits a first-degree felony.² In lieu of a fine otherwise authorized by law, a person who derives pecuniary value from a RICO violation or causes personal injury, property damage, or other loss, as a result of such violation, may be sentenced to pay a fine not exceeding three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and costs of investigation and prosecution, reasonably incurred. Section 895.05, F.S., also provides for a number of civil remedies for violation of the Florida RICO Act, including forfeiture of property used in the course of, or derived from, a RICO violation.

Investigations & Prosecutions of Racketeering Activity by Office of Statewide Prosecution

Section 16.56, F.S., authorizes the Office of Statewide Prosecution in the Department of Legal Affairs to investigate and prosecute racketeering activity when the offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when the offense is connected with an organized criminal conspiracy affecting two or more judicial circuits.

Florida Control of Money Laundering in Financial Institutions Act

Section 655.50, F.S., which is known as the “Florida Control of Money Laundering in Financial Institutions Act,” requires the submission of certain reports and the maintenance of certain records of transactions involving currency or monetary instruments. These requirements are, in part, intended to deter persons from using financial institutions to conceal the proceeds of criminal activity. Many of these requirements relate to proceeds from “specified criminal activity,” which means any racketeering activity. Criminal penalties for a violation of this section range from a first-degree misdemeanor³ to a first-degree felony, depending upon the provision of this section that is violated, the amount of the financial transaction, and other factors. This section also provides for fines and civil penalties.

Florida Money Laundering Act

Section 896.101, F.S., which is known as the “Florida Money Laundering Act,” prohibits a number of activities related to proceeds derived from a “specified criminal activity,” which means any racketeering activity. Criminal penalties for a violation of this section range from a third-degree felony⁴ to a first-degree felony, depending upon the provision of this section violated, the amount of the financial transaction, and other factors. This section also provides for fines and civil penalties.

Racketeering Is Within the Subject Matter Jurisdiction of a Statewide Grand Jury

Section 905.34, F.S., specifies the offenses that are within the subject matter jurisdiction of a statewide grand jury. One of these offenses is racketeering activity.

² A person who commits a first-degree felony may be sentenced to up to 30 years in state prison, or, when specifically provided by statute, to a term of years in state prison that does not exceed life imprisonment. *See* s. 775.082, F.S.

³ A person who commits a first-degree misdemeanor may be sentenced to a term of imprisonment not exceeding one year. *See* s. 775.082, F.S.

⁴ A person who commits a third-degree felony may be sentenced to up to five years in state prison. *See* s. 775.082, F.S.

III. Effect of Proposed Changes:

Florida Penalty for Human Trafficking

This bill amends the human trafficking criminal statute, s. 787.06, F.S., to broaden the definition of the term “financial harm” in order to include harm through:

- Extortionate extension of credit;
- Loan sharking, as defined in s. 687.071, F.S.; or
- Employment contracts that violate the statute of frauds, as provided in s. 725.01, F.S.

This bill amends the human trafficking criminal statute, s. 787.06, F.S., to broaden the definition of the term “forced labor services” in order to include labor or services obtained by:

- Fraud or coercion;
- Isolating a person without lawful authority or against the person’s will;
- Using lending practices under which the labor or services are pledged as security for the debt but are not applied toward liquidation of the debt; and
- Destroying, concealing, removing, confiscating, withholding, or possessing a person’s actual or purported government identification documents.

The offense of human trafficking occurs when a person has the intent that the trafficked person engage in forced labor or services.

The bill also expands the scope of the human trafficking offense to make it a second-degree felony for a person to attempt to engage in human trafficking or for a person to knowingly benefit financially from human trafficking, and in any such action is entitled to minimum damages in the amount of \$200, and reasonable attorney’s fees and court costs in the trial and appellate courts.

Florida’s Civil Remedies for Criminal Practices Act

The bill provides that a person injured or suffering losses as a result of certain criminal activity involving human trafficking has a civil cause of action for three times the actual damages the person sustained. The bill further specifies that, as an alternative to that cause of action, a person who is a victim of human trafficking or sex trafficking may pursue a cause of action for three times the amount of profit gained from the human trafficking or sex trafficking.

Florida’s RICO Act and Conforming Changes

The bill amends s. 895.02, F.S., to provide for the prosecution and punishment of racketeering activity that involves human trafficking. The bill accomplishes this effect by specifically including “human trafficking” within the list of crimes that underlie the definition of racketeering.

The bill also reenacts of ss. 16.56(1)(a), 655.50(3)(g), 896.101(2)(g), and 905.34, F.S. By amending the definition of “racketeering activity” in s. 895.02, F.S., and reenacting the cited provisions, the bill:

- Authorizes the Office of Statewide Prosecution to investigate and prosecute racketeering activity that involves human trafficking in multi-jurisdictional cases.
- Provides for the prosecution and punishment of financial transactions and other activities related to proceeds from racketeering activity that involves human trafficking.
- Provides that the subject matter jurisdiction of a statewide grand jury includes racketeering activity that involves human trafficking.

Effective Date

The bill provides that the act takes effect on October 1, 2006.

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:

Private sector impact should be limited to the impact upon those who violate the human trafficking statute or Florida’s RICO Act.

C. Government Sector Impact:

An analysis by the Criminal Justice Impact Conference of the bed impact of the penalty provisions of the bill for the Department of Corrections indicate no discernable impact. The Department of Corrections’ analysis mirrored this analysis.

The Department of Legal Affairs also provided that there should be minimal impact, if any, to this department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the U.S. Department of State, data it reviewed “showed that, of the estimated 600,000 to 800,000 men, women, and children trafficked across international borders each year, approximately 80 percent are women and up to 50 percent are minors. The data also illustrate that the majority of transnational victims are trafficked into commercial sexual exploitation.”⁵ In 2004 and 2005, the media reported on several human trafficking cases in Florida.⁶

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

⁵ *Trafficking in Persons Report (June 2005)*, U.S. Department of State.

⁶ See, e.g., “Florida Man Sentenced on Human Trafficking-Related Charges,” Press Release from the U.S. Department of Justice, dated March 2, 2004 (http://www.usdoj.gov/opa/pr/2004/March/04_crt_133.htm) (case involving conspiracy to hold migrant farm laborers in involuntary servitude); “Group targets modern-day slavery,” *St Petersburg Times*, dated June 10, 2004 (“A 14-year old girl is lured from her home in Mexico and smuggled to southern Florida. Her abductors force her to have sex with as many as 30 men a day.”); “Women facing harboring charge,” *news-press.com*, dated August 17, 2005 (<http://www.news-press.com/apps/pbcs.dll/article?AID=20050817/NEWS01/508170451/1075>) (arrest of woman suspected of “operating a network of brothels that imported young girls from Mexico to work as prostitutes”); “Teen Was Living In Servitude in Brevard Co., Police Say,” *WESH.com*, dated December 7, 2005 (<http://www.wesh.com/print/5487670/detail.html>) (Palm Bay Police Department discovers 15-year old Mexican girl living in servitude at a Palm Bay home); “Crackdown On Child Prostitution,” *CBS News*, dated December 21, 2005 (<http://www.cbsnews.com/stories/2005/12/16/national/main1133570.shtml>) (federal investigation of child prostitution enterprises results in the filing of charges in Florida, Michigan, New Jersey and Pennsylvania).

VIII. Summary of Amendments:

None.

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