

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill increases the penalties for several criminal offenses. The bill increases the fines which must be imposed for certain criminal offenses. The bill requires FDLE to post information on the internet relating to offenders who have been convicted of certain offenses.

Promote personal responsibility: The bill requires information to be posted on the internet regarding offenders who have been convicted of certain prostitution-related offenses.

B. EFFECT OF PROPOSED CHANGES:

Definitions: The bill removes definitions contained in several sections of statute within chapter 796 and creates a new section of statute which will apply these definitions to all of the sections contained within the chapter.

Procuring a person under age 18 for prostitution: Section 796.03, F.S. prohibits procuring a person under the age of 18 for prostitution. The offense is currently a second degree felony. HB 1231 amends this section to make the offense a first degree felony. This will have the effect of increasing the maximum sentence that may be imposed for the offense. The statutory maximum sentence for a third degree felony is five years imprisonment; for a second degree felony is fifteen years imprisonment and for a first degree felony is thirty years imprisonment.¹

Compelling or forcing another person to become a prostitute: Section 796.04, F.S. provides that it a third degree felony to force, compel or coerce another person to become a prostitute. The bill makes this offense a first degree felony.

Sex trafficking: Section 796.045, F.S. 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. The offense is a second degree felony. If the victim of the offense was under the age of 14 or if the offense results in death, the offense is a first degree felony.

Section 796.035, F.S. provides that any parent, legal guardian, or other person having custody or control of a minor who sells or transfers 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 participate in the trade of sex trafficking commits a first degree felony. The bill makes this offense a life felony.

The bill combines sections 796.045 and 796.035 into one section of statute. The bill changes the offense of sex trafficking that involves a victim less than 14 years of age to include a victim less than 18 years of age. The bill makes the offense of sex trafficking a first degree felony when it does not involve a victim under the age of 18 and makes the offense a life felony when it involves a victim under the age of 18.

Deriving support from the proceeds of prostitution: Section 796.05, F.S. makes it a third degree felony for any person with reasonable belief or knowing that 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 amends this section to apply this offense to living or deriving support "directly or indirectly" from prostitution proceeds.

¹ s. 775.082, F.S.

Renting space for lewdness, assignation or prostitution: Section 796.06, F.S. provides that it is a third degree felony to let or rent any place, structure or trailer or other conveyance, with the knowledge that it will be used for the purpose of lewdness, assignation, or prostitution. The bill modifies this language to provide that any person who owns, establishes, maintains, lets, rents or operates any place, structure, trailer, or conveyance and who knows or should know that it will be used for the purpose of activity prohibited under chapter 796, commits a third degree felony.

The bill provides that the owner or operator of any adult entertainment establishment² as defined in s. 847.001 who knows or should know that the establishment is being used, in whole or in part, for the purpose of advertising, facilitating, soliciting, promoting, or arranging any activity prohibited under chapter 796, whether or not the owner or operator derives income from the prohibited activity, commits a third degree felony.

The bill also provides that any person having direct control over or the ability to edit the content of a web page who places, causes to be placed or allows to remain, after notification of activity prohibited under chapter 796, any language or other content on such web page for the purpose of advertising, facilitating, soliciting, promoting, or arranging any activity prohibited by chapter 796, whether or not the person in control derives income from the prohibited language, content or activity commits a third degree felony.

Prostitution: Currently, section 796.07, F.S. provides that it is unlawful:

- (a) To own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution.
- (b) To offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act.
- (c) 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.
- (d) 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.
- (e) To offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation.

² Section 847.001 defines the term as follows: “Adult entertainment establishment” means the following terms as defined:

- (a) “Adult bookstore” means any corporation, partnership, or business of any kind which restricts or purports to restrict admission only to adults, which has as part of its stock books, magazines, other periodicals, videos, discs, or other graphic media and which offers, sells, provides, or rents for a fee any sexually oriented material.
- (b) “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.
- (c) “Special Cabaret” means any business that features persons who engage in specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults.
- (d) “Unlicensed massage establishment” means any business or enterprise that offers, sells, or provides, or that holds itself out as offering, selling, or providing, massages that include bathing, physical massage, rubbing, kneading, anointing, stroking, manipulating, or other tactile stimulation of the human body by either male or female employees or attendants, by hand or by any electrical or mechanical device, on or off the premises. The term “unlicensed massage establishment” does not include an establishment licensed under s. 480.43 which routinely provides medical services by state-licensed health care practitioners and massage therapists licensed under s. 480.041.

- (f) To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.
- (g) 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.
- (h) To aid, abet, or participate in any of the acts or things enumerated in this subsection.
- (i) To purchase the services of any person engaged in prostitution.

HB 1231 amends this section to remove the provision making it unlawful to own, establish, maintain or operate any place, structure, building or conveyance for the purpose of lewdness, assignation or prostitution. This offense will be covered by the changes made to section 796.06, F.S., discussed above.

The bill also makes other changes to this section in order to clarify what offenses are prohibited by this section and what offenses are prohibited by other sections within the chapter.

Coercion or inducement – civil cause of action: According to section 796.09, F.S., a person has a cause of action for compensatory and punitive damages against:

- (a) A person who coerced that person into prostitution;
- (b) A person who coerces that person to remain in prostitution; or
- (c) A person who uses coercion to collect or receive any part of that person's earnings derived from prostitution.

The bill will apply the cause of action to a person who coerced or *induced* that person to become a prostitute or remain in prostitution or who used coercion or *inducement* to collect earnings derived from prostitution.

The bill also provides that a person has a cause of action for compensatory or punitive damages against:

- The owner or operator of any adult entertainment establishment who knows or should know that the establishment is being used, in whole or in part, for the purpose of advertising, facilitating, soliciting, promoting or arranging any activity prohibited under chapter 796 involving that person, whether or not the owner or operator derives income from the activity.
- Any person having direct control over or the ability to edit the content of a web page who places, causes to be placed or allows to remain, after notification of activity prohibited under chapter 796, any language or other content on such web page for the purpose of advertising, facilitating, soliciting, promoting, or arranging any activity prohibited by chapter 796, whether or not the person in control derives income from the prohibited language, content or activity.

The section currently provides that certain facts do not constitute a defense to a complaint under this section including that:

- (a) The plaintiff was paid or otherwise compensated for acts of prostitution;
- (b) The plaintiff engaged in acts of prostitution prior to any involvement with the defendant; or
- (c) The plaintiff made no attempt to escape, flee, or otherwise terminate contact with the defendant.

Under the bill, the fact that the plaintiff stipulated or otherwise agreed that the prohibited acts did not occur as a result of coercion or inducement will not constitute a defense to a complaint under this section.

Current law authorizes the court to award prevailing plaintiff's reasonable attorney's fees and costs. The bill will require the court to award these costs and fees.

Witness protection: Generally, if the statement is obtained legally, a state attorney can use at trial any statement made by the defendant without it being considered inadmissible hearsay.³ The state attorney can grant a suspect immunity from prosecution in order to compel them to testify against another person.⁴ The bill creates s. 796.101, F.S. which provides that information provided to a law enforcement agency from any person with knowledge of a violation of chapter 796 will not be admissible into evidence against the declarant in any civil or criminal proceeding in which the declarant is a party, except in any proceeding against the declarant for perjury or making a false statement or report. The bill provides that the declarant may admit the information if the rules of evidence otherwise permit it.

The bill provides that information discovered as a result of information provided as described above will not be admissible in evidence against the declarant in any civil or criminal trial in which the declarant is a party, except in any proceeding against the declarant for perjury or making false statement or reports. The declarant will be able to admit the information if the rules of evidence otherwise permit.

The bill provides that this section applies to an individual participating in an investigation or proceeding and disclosing information on his or her own initiative in a sworn statement. This section does not apply once a law enforcement agency has initiated a criminal investigation against a person and advised the person of his or her right to avoid self-incrimination.

Website: The bill creates section 796.11, F.S. which requires the Florida Department of Law Enforcement to create and maintain a website which will post the following information relating to any person who has been adjudicated guilty or has had adjudication withheld for a felony violation of chapter 796:

1. Offender's name;
2. Offender's date of birth;
3. Date of the conviction;
4. County where the offense occurred;
5. Offense committed;
6. Booking photograph taken when the offender was arrested.

The bill provides that the information required to be posted must be provided to FDLE by the clerk of the court for the county in which the sentence is imposed within 10 days after the date the offender is sentenced. FDLE will be required to place the information on the website within 5 business days after the date it receives the information. The information will remain on the website for five years from the date of posting.

Fines: The bill creates s. 938.14, F.S. which requires a court to assess a \$101 dollar fine on any defendant who pleads guilty or nolo contendere to or is convicted of, regardless of whether adjudication is withheld, any violation of chapter 796. The fine will be in addition to any other fine required by law and will be paid to the clerk of the court. The clerk will forward the fine to the Department of Revenue for deposit in the Operating Trust Fund of the Department of Law Enforcement to be used for the maintenance of the website discussed above. The bill authorizes the clerk of the court to retain \$1 of each surcharge as a service charge.

³ S. 90.803(18), F.S.

⁴ See section 914.04, F.S.

Currently, section 938.10, F.S. requires the imposition of a \$101 fine for certain sexual offenses. The bill deletes the reference to a violation of section 796.03, F.S.

Civil remedies for criminal offenses: Chapter 772 is known as the “Civil Remedies for Criminal Practices Act”. Section 772.103, F.S. makes it unlawful for a person with criminal intent to receive any proceeds derived, directly or indirectly, from a pattern of criminal activity. 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 s. 772.103, F.S. has a cause of action for threefold the actual damages sustained and reasonable attorney's fees and court costs. Section 772.102 defines the term “criminal activity” to include a list of criminal offenses. Several offenses within chapter 796 are currently included within the definition. The bill adds a violation of section 796.06, F.S. to the definition of “criminal activity”.

RICO: Sections 895.01 – 895.06, F.S. are known as the Florida Racketeer Influenced and Corrupt Organization Act (RICO Act) The sections contain criminal penalties and a civil cause of action for racketeering activity. Section 895.02, F.S. defines the term “racketeering activity” to include a long list of criminal offenses including several offenses within chapter 796. The bill adds section 796.06, F.S. to the definition.

Dispositions of liens and forfeited property: Sections 932.701-932.707, F.S. are known as the Florida Contraband Forfeiture Act. Contraband includes any real property or personal property used in the commission of any felony or obtained as a result of a violation of the Florida Contraband Forfeiture Act. An order of forfeiture gives the law enforcement agency that seized the property the right or title to the contraband property. The law enforcement agency can then retain the property for the agency’s use or sell the property.

Section 932.7055, F.S. governs the disposition of forfeited property. The bill will authorize a person providing information that materially assists law enforcement in an investigation of a felony violation of chapter 796 which leads to the forfeiture of property to receive a one-third share of the proceeds. If more than one person provides information that material assists law enforcement, those persons will split the one-third share. The office of the state attorney that prosecuted the case will also be entitled to a one-third share of the proceeds. All liens must first be satisfied and all court costs associated with the forfeiture must be paid before the proceeds can be divided. The bill specifies that law enforcement officers will not be eligible to receive a share of the proceeds of the forfeiture action. Further, a person who was the subject of a pending warrant, indictment, or information in any jurisdiction or was on supervision at the time they provided the information are not entitled to receive a share of the proceeds of the forfeiture action.

Offense severity ranking chart: The bill amends the offense severity ranking chart to include the offense of a third or subsequent prostitution violation within level 1; furthering criminal activity prohibited in chapter 796 in level 2; deriving support from prostitution proceeds in level 4; sex trafficking in level 8; sex trafficking involving a minor and selling or buying of minors in sex trafficking in level 9.

C. SECTION DIRECTORY:

Section 1. Creates s. 796.011, F.S. relating to definitions.

Section 2. Amends s. 796.03, F.S., relating to procuring a minor for prostitution.

Section 3. Amends s. 796.04, F.S., relating to forcing, compelling or coercing another to become a prostitute.

Section 4. Amends s. 796.035, F.S., relating to sex trafficking.

Section 5. Amends s. 796.05, F.S., relating to deriving support from the proceeds of prostitution.

- Section 6. Amends s. 796.06, F.S., relating to further activity prohibited under chapter 796.
- Section 7. Amends s. 796.07, F.S., relating to prohibiting prostitution.
- Section 8. Amends s. 796.09, F.S., relating to coercion.
- Section 9. Creates s. 796.101, F.S., relating to witness protection.
- Section 10. Creates s. 796.11, F.S., relating to website posting.
- Section 11. Creates s. 938.14, F.S., relating to prostitution and related offenses.
- Section 12. Amends s. 938.10, F.S., relating to additional court costs imposed in certain crimes against minors.
- Section 13. Amends s. 772.102, F.S., relating to definitions.
- Section 14. Amends s. 895.02, F.S., relating to definitions.
- Section 15. Amends s. 932.7055, F.S., relating to disposition of liens and forfeited property.
- Sections 16-20. Amends ss. 932.7055, 322.28, 775.21, 943.0435, 944.606 and 944.607, F.S., to conform cross-references to changes made by bill.
- Section 21. Amends s. 921.0022, F.S. relating to offense severity ranking chart.
- Section 22. Provides effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill requires the imposition of a \$101 fine for a violation of any offense in chapter 796. The clerk of the court is authorized to retain \$1 as a service charge. The remainder of the amount will be sent to the Department of Revenue for deposit in the Operating Trust Fund of the Department of Law Enforcement (DLE) to be used for the maintenance of the website which will post information relating to people who commit a violation of chapter 796.

Currently, section 938.10, F.S. requires that a \$101 fine be imposed for a violation of several sections of statute, including section 796.03, F.S., relating to procuring a person under the age of 18 for prostitution. \$100 from this fine is sent to a trust fund of the Department of Children and Families (DCF). The bill removes the reference to section 796.03, F.S. from this section of statute and instead includes it in the newly created section of statute referenced above. Therefore, the \$100 fine for a violation of section 796.03 will be sent to FDLE rather than to the DCF trust fund. FDLE estimates that this will result in \$350,000 annually.

2. Expenditures:

The bill requires FDLE to establish a web-site which will contain information regarding individuals who have committed a violation of chapter 796. FDLE anticipates that this will cost \$292,903 in 07-08 and \$203,636 annually thereafter.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

As detailed in this analysis, the bill allows the office of the state attorney prosecuting the case and a person who provided information to law enforcement that materially assisted law enforcement in the investigation of a felony violation of chapter 796 to each have a 1/3 share of any proceeds that are obtained as a result of a forfeiture proceeding. To the extent that these proceeds would currently go to local law enforcement, there could be a loss of revenue.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

As detailed in this analysis, the bill allows a person who provided information to law enforcement that materially assisted law enforcement in the investigation of a felony violation of chapter 796 to receive a 1/3 share of any proceeds that are obtained as a result of a forfeiture proceeding.

D. FISCAL COMMENTS:

The current House version of the FY 2007-08 General Appropriations Act does not contain increased appropriations to cover the expenditure requirements estimated by the FDLE.

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:

Section 9: This section provides that information provided to a law enforcement agency from any person with knowledge of a violation of chapter 796 will not be admissible into evidence against the declarant in any civil or criminal proceeding. However, unlike the immunity statute, section 914.04, F.S., this section does not require the person to testify against another suspect in exchange for the fact that the statements will be inadmissible against the declarant. Although the state could possibly use the statements to obtain evidence against another suspect, unless the declarant testifies at trial, the rules of evidence would bar statements made by the declarant from being admissible at any trial of that suspect.

The current immunity statute gives the prosecutor discretion to decide whether to grant a particular suspect immunity. This bill does not grant a suspect immunity from prosecution for a violation of chapter 796. However, if a suspect discloses information on his or her own initiative in a sworn statement, unless the person has been advised of his or her right to avoid self-incrimination, the state attorney would be barred from using these statements as well as any evidence that is discovered as a result of these statements against the declarant. Should the state attorney obtain evidence independent of the declarant's statement,

and any evidence gathered stemming from that statement, the prosecutor may charge the declarant with offenses under chapter 796.

D. STATEMENT OF THE SPONSOR

No statement submitted by the sponsor of the bill.

The council chair chose not to submit a statement regarding the council substitute.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

The Safety & Security Council adopted an amendment. The amendment modified the section of the bill relating to posting of information on the internet regarding offenders who commit a violation of chapter 796. The amendment exempted offenders who were convicted of engaging in prostitution. The amendment removed the requirement that the clerk of the court send a copy of the judgment and sentence to FDLE and provides that the clerk must send the required information to FDLE electronically. The amendment clarified that the website will not allow the public to access information that is otherwise confidential and exempt from public record requirements. The amendment also provided that FDLE is immune from civil liability for good faith compliance with the requirements of this section.

The amendment removed specific references to the term “unlicensed massage establishment” from the bill because that term is already included within the definition of an “adult entertainment establishment”.

The amendment clarified the provisions of the bill that allow a person who gives information to law enforcement regarding a violation of chapter 796 which materially assists the investigation to receive a 1/3 share of any forfeited contraband. The amendment provided that if more than one person provided such assistance, they will share equally in the 1/3 share. The council reported the bill favorably as a council substitute.

The Policy and Budget Council adopted an amendment which limited the offenders who will be required to be placed on the FDLE website to those who committed a *felony* violation of chapter 796. The amendment also clarified that the information must remain on the website for five years from the date of posting. The council reported the bill favorably as a council substitute.