

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1151 Sex Trafficking

SPONSOR(S): Hukill

TIED BILLS: IDEN./SIM. BILLS: SB 2478

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Homeland Security & Public Safety	11 Y, 0 N	Kramer	Kramer
2) Safety & Security Council		Kramer	Havlicak
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Chapter 796 provides criminal and civil penalties for a variety of prostitution-related offenses. The bill:

- Increases the felony degree of the offenses of procuring a person under the age of 18 for prostitution, compelling or forcing a person to become a prostitute, and sex trafficking.
- Modifies the nuisance statute to provide that any place, structure, building, trailer or other conveyance that has been used on more than two occasions within a 6-month period, as the site of a violation of chapter 796 can be declared a nuisance.
- Provides that the offense of deriving support from the proceeds of prostitution applies if a person with reasonable belief or knowing another person is engaged in prostitution lives or derives support or maintenance *directly or indirectly* from what is believed to be the earnings or proceeds of prostitution.
- Expands the offense of leasing or renting a place or structure with the knowledge that it will be used for the purpose of prostitution to also include a person who owns such a location with the knowledge that it will be used for any violation of chapter 796.
- Creates a section of statute which provides that if a business entity is convicted of a violation of chapter 796, the court may, when appropriate order:
  - Its dissolution or reorganization;
  - The suspension or revocation of any license; or
  - The surrender of its charter, if organized under the laws of this state, or any certificate to conduct business in this state, if it is not organized by the laws of this state.
- Adds predicate offenses from chapter 796 to the RICO statute.

The Criminal Justice Impact Conference met on March 14, 2008, and determined this bill would have an insignificant prison bed impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill increases the penalties for several criminal offenses.

#### B. EFFECT OF PROPOSED CHANGES:

Chapter 796 contains several sections of statute which create criminal penalties for a variety of prostitution related offense as discussed further below.

*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.<sup>1</sup> The offense is currently a second degree felony. HB 1151 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.<sup>2</sup>

*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. 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 or if it results in death.

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 also makes conforming changes to the sexual predator (s. 775.21, F.S.) and sexual offender (ss.943.0435, 944.606 and 944.607, F.S.) statutes.

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<sup>1</sup> In *Petty v. State*, 761 So.2d 474 (Fla. 3<sup>rd</sup> DCA 2000), the court reversed a conviction where the defendant paid a minor to have sex with him where there was no evidence that the minor was exploited for the defendants personal gain or that a third party was involved. The court held that the “statute at issue addresses the criminal act of hiring of a minor for sexual activity with a third party. The term ‘procurement’ connotes a pecuniary gain from the exploitation of another.... [I]n the context of prostitution, the word ‘procure’ must be given its specialized meaning, which is to ‘obtain as a prostitute for another,’ connoting a commercial motive.” (quoting *Kobel v. State*, 745 So.2d 979 (Fla. 4th DCA 1999)).

<sup>2</sup> s. 775.082, F.S.

*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.<sup>3</sup> The bill amends this section to apply this offense to living or deriving support "directly or indirectly" from prostitution proceeds.

*Renting space for lewdness, assignation or prostitution:* Section 796.06, F.S. provides that it is a second degree misdemeanor 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, building or part thereof or trailer or other conveyance with knowledge or reasonable cause to believe that it is being used or will be used in whole or in part for the purpose of activity prohibited under chapter 796, 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.
- (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 1151 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.

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<sup>3</sup> *State v. Morris*, 540 So.2d 226, 226 -227 (Fla. 5<sup>th</sup> DCA 1989)( "The information is deficient and fails to state a violation of the statute because it fails to allege that appellant derived support from the prostitution earnings. It merely says he got support from her, knowing she was a prostitute. At the hearing below appellant's attorney convinced the judge to dismiss the case with the argument that merely knowing she was a prostitute and receiving support do not necessarily combine to make a violation of the statute. We agree. In order to charge a crime under the statute it must be alleged the accused lived from or derived support from the prostitution earnings.")

*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<sup>4</sup> 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*<sup>5</sup> that person to become a prostitute or remain in prostitution or who used coercion or *inducement* to collect earnings derived from prostitution.

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. Further, in the case of a cause of action based on inducement, the fact that the victim consented will not be a defense.

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.

*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 section 796.06, F.S., relating to owning or renting a place for the purpose of any activity prohibited under chapter 796, to the definition of criminal activity.

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<sup>4</sup> The bill provides that the term coerces means uses force or intimidation, or any practice of domination or restraint, in order to bring about or cause a person to take certain action. The term includes, but is not limited to, the use of:

- (a) Physical force or threat of physical force.
- (b) Physical or mental torture.
- (c) Kidnapping.
- (d) Blackmail.
- (e) Extortion or claims of indebtedness.
- (f) Threat of legal complaint or report of delinquency.
- (g) Threat to interfere with parental rights or responsibilities, whether by judicial or administrative action or otherwise.
- (h) Restraint of speech or communication with others.
- (i) Exploitation of a condition of developmental disability, cognitive limitation, affective disorder, or substance dependency.
- (j) Exploitation of victimization by sexual abuse.
- (k) Exploitation of pornographic performance.
- (l) Exploitation of human needs for food, shelter, safety, or affection.

<sup>5</sup> The bill defines the term "induces" to mean "offers, promises or withholds or threatens to withhold, a benefit or advantage, whether legal, financial, or otherwise, such as a promise of marriage, employment, or material support or advantage, in order to bring about or cause a person to take certain action.

*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 list of criminal offenses including several offenses within chapter 796. The bill adds section 796.06, F.S., relating to owning or renting a place for the purpose of any activity prohibited under chapter 796, to the definition.

*Violation by a business entity of chapter 796*: The bill creates s. 796.10, F.S. which provides that if a business entity is convicted of a violation of chapter 796, the court may, when appropriate order:

- Its dissolution or reorganization;
- The suspension or revocation of any license, including, but not limited to, any occupational license, license under chapter 561<sup>6</sup>, permit or prior approval granted to the business entity by a state agency; or
- The surrender of its charter, if organized under the laws of this state, or any certificate to conduct business in this state, if it is not organized by the laws of this state.

The section also provides that all property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of a provision of chapter 796 is subject to civil forfeiture to the state under sections 932.701-932.706.<sup>7</sup>

*Local administrative action to abate prostitution related nuisances*:

Section 893.138, F.S. gives a county or municipality the authority, by ordinance, to create an administrative board to hear complaints regarding nuisances described in the section. If the board declares a place or premises to be a public nuisance, it may enter an order requiring the owner of the place or premises to adopt a procedure to abate the nuisance or it may enter an order prohibiting:

1. The maintaining of the ordinance;
2. The operating or maintaining of the place or premises, including the closure of the place or premises or any part, thereof; or
3. The conduct, operation or maintenance of any business or activity on the premises which is conducive to such nuisance.

This section provides that any place or premises that has been used on more than two occasions within a 6-month period as the site of a violation of the prostitution statute, s. 796.07, may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in the section. The bill expands this to apply to a place or premises that has been used on more than two occasions within a 6-month period as the site of a violation of any offense in chapter 796, rather than only a violation of s. 796.07, F.S.

*Places declared a nuisance*: Section 823.05, F.S. provides, in part, that whoever erects, establishes, continues or maintains, owns or leases any building, booth, tent or place which tends to annoy the community or injure the health of the community or any place or prostitution, assignation or lewdness shall be deemed guilty of maintaining a nuisance. The section provides that such places shall be abated or enjoined as provided in section 60.05 and 60.06, F.S.

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<sup>6</sup> Chapter 561 relates to alcoholic beverages and tobacco.

<sup>7</sup> 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 60.05, F.S. provides that when any nuisance as defined in s. 823.05 exists, the Attorney General, state attorney, city attorney, county attorney, or any citizen of the county may sue in the name of the state to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists. The court may issue a temporary injunction enjoining the nuisance and after trial, may issue a permanent injunction.

The bill amends s. 823.05, F.S. to provide that any place, structure, building or part or trailer of other conveyance that has been used:

1. On more than two occasions within a 6-month period, as the site of a violation of chapter 796;
2. On more than two occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
3. On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
4. By a criminal street gang for the purpose of conducting a pattern of criminal street gang activity as defined by s. 874.03; or
5. On more than two occasions within a 6-month period, as the site of a violation of s. 812.019 relating to dealing in stolen property

may be declared a public nuisance and abated or enjoined as provide in section 60.05 and 60.06, F.S.

*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. Amends s. 772.102, F.S., relating to definitions.

Section 2. Amends s. 775.21, F.S., relating to Florida Sexual Predators Act.

Section 3. Creates s. 796.011, F.S. relating to definitions.

Section 4. Amends s. 796.03, F.S., relating to procuring a minor for prostitution.

Section 5. Amends s. 796.04, F.S., relating to forcing, compelling or coercing another to become a prostitute.

Section 6. Amends s. 796.045, F.S., relating to sex trafficking.

Section 7. Amends s. 796.05, F.S., relating to deriving support from the proceeds of prostitution.

Section 8. Amends s. 796.06, F.S., relating to further activity prohibited under chapter 796.

Section 9. Amends s. 796.07, F.S., relating to prohibiting prostitution.

Section 10. Amends s. 796.09, F.S., relating to coercion.

Section 11. Creates s. 796.10, F.S. relating to violations by a business entity; sanctions.

Section 12. Amends s. 823.05, F.S. relating to places declared a nuisance; abatement and injunction.

Section 13. Amends s. 893.138, F.S. relating to local administrative action to abate drug-related, prostitution-related, or stolen-property related public nuisances and criminal street gang activity.

Section 14. Amends s. 895.02, F.S., relating to definitions.

Section 15. Amends s. 921.0022, F.S. relating to offense severity ranking chart.

Sections 16-20. Amends ss. 322.28, 943.0435, 944.606 and 944.607, F.S., to conform cross-references to changes made by bill.

Section 20. Provides effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

E. The Criminal Justice Impact Conference met on March 14, 2008, and determined this bill would have an insignificant prison bed impact.

### 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.

#### D. STATEMENT OF THE SPONSOR

No statement submitted.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES