

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 123 Human Smuggling

SPONSOR(S): Snyder and others

TIED BILLS: IDEN./SIM. BILLS: SB 502

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----|---|----------|---------|----------------|
| 1) | Public Safety & Domestic Security Policy Committee | 8 Y, 0 N | Kramer | Kramer |
| 2) | Criminal & Civil Justice Policy Council | | Kramer | Havlicak |
| 3) | Criminal & Civil Justice Appropriations Committee | | | |
| 4) | Full Appropriations Council on General Government & Health Care | | | |
| 5) | | | | |

SUMMARY ANALYSIS

HB 123 creates section 787.07, F.S., which makes it a third degree felony for a person to transport *into the state* an individual who the person knows or should know is illegally entering the United States or has illegally remained in the United States. The section also provides that:

- If the person transported in violation of this section is a minor, the offense will be a second degree felony.
- If a violation of the section results in great bodily harm or death of a person transported, the offense will be a second degree felony if the person transported is an adult and a first degree felony if the person transported is a minor.

The section also provides that a person commits a separate offense for each person he or she transports in violation of the section.

On February 25, 2009, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Human trafficking and sex trafficking offenses: Section 787.06, F.S., makes it a second degree felony for any person to knowingly:

1. Engage, or attempt to engage, in human trafficking with the intent or knowledge that the trafficked person will be subjected to forced labor or services; or
2. Benefit financially by receiving anything of value from participation in a venture that has subjected a person to forced labor or services.

The term "human trafficking" is defined by that section to mean transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport.

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 and is a first degree felony if committed against a victim under the age of 14 or if it results in death.

Florida statutes do not specifically provide criminal penalties for transporting a person into the state who is illegally entering or remaining in the United States.

Other jurisdictions: Federal law governs whether a person is legally authorized to enter or remain in this country. Federal law provides criminal penalties for illegally transporting a person into the country. Specifically, 8 U.S.C. s. 1324 provides criminal penalties for any person who:

1. knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

2. knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;
3. knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation; or
4. encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.

Several other states have passed legislation in recent years making it unlawful to transport a person who is illegally in the country or entering the country.¹ For example, Colorado's law provides that a person commits "smuggling of humans" if, "for the purpose of assisting another person to enter, remain in, or travel through the United States or the state of Colorado in violation of immigration laws, he or she provides or agrees to provide transportation to that person in exchange for money or any other thing of value".²

Effect of bill:

HB 123 creates section 787.07, F.S., which makes it a third degree felony for a person to transport into the state an individual who the person knows or should know is illegally entering the United States or has illegally remained in the United States. The section also provides that:

- If the person transported in violation of this section is a minor, the offense will be a second degree felony.
- If a violation of the section results in great bodily harm or death to a person transported, the offense will be a second degree felony if the person transported is an adult and a first degree felony if the person transported is a minor.

The section also provides that a person commits a separate offense for each person he or she transports in violation of the section.

B. SECTION DIRECTORY:

Section 1. Creates s. 787.07, F.S., relating to human smuggling.

Section 2. Provides effective date of October 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

¹ See e.g.: Colorado - C.R.S.A. s. 18-13-128; Arizona - A.R.S. s. 13-2319; Oklahoma - 21 Okl.St. Ann. s. 446; Tennessee - T.C.A. s. 39-17-114; Missouri - V.A.M.S. 577.722; Utah - Ut. St. s. 76-10-2901.

² C.R.S.A. s. 18-13-128.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill would criminalize the activity of transporting into the state an individual who the person knows is illegally entering the United States or has illegally entered or remained in the United States. Federal law currently provides criminal penalties for similar behavior.

D. FISCAL COMMENTS:

On February 25, 2009, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES