

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 502

INTRODUCER: Senator Dockery

SUBJECT: Human Smuggling

DATE: March 2, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable
2.	Toman	Walsh	CF	Favorable
3.			JA	
4.				
5.				
6.				

I. Summary:

The bill punishes human smuggling. The bill makes it unlawful for a person to transport into this state an individual whom the person knows, or should know, is illegally entering the United States or has illegally remained in the United States.

The bill provides that if the individual transported is 18 years of age or older, the offense is a third degree felony. If the individual transported is a minor, the offense is a second degree felony. If, during the course of the violation, the individual being transported suffers great bodily harm or death, the offense is a second degree felony, unless the individual is a minor, in which case the offense is a first degree felony. A person commits a separate offense for each individual or minor he or she transports into this state in violation of this section.

This bill creates section 787.07, F.S.

II. Present Situation:

Human trafficking and sex trafficking are criminal offenses¹ under Florida law, but human smuggling is not.

Distinguishing Human Smuggling and Trafficking

Human and sex trafficking can be generally distinguished from human smuggling by the actions and the intent of the participants and by their final circumstances.

¹ Sections 787.06 and 796.045, F.S.

The Human Smuggling and Trafficking Center in the U.S. Department of State has explained the differences between human smuggling and human trafficking:

Trafficking in persons and human smuggling are some of the fastest growing areas of international criminal activity, according to the United Nations. It often involves a number of different crimes, spanning several countries, and involving an increasing number of victims. Trafficking in persons (TIP) can be compared to a modern day form of slavery. It involves the exploitation of people through force, coercion, threat, and deception and includes human rights abuses such as debt bondage, deprivation of liberty, and lack of control over freedom and labor. Trafficking can be for purposes of sexual exploitation or labor exploitation.

...

While there are significant differences between TIP and human smuggling, the underlying issues that give rise to these illegal activities are often similar. Generally, extreme poverty, lack of economic opportunities, civil unrest, and political uncertainty, are factors that all contribute to an environment that encourages human smuggling and trafficking in persons.

Although there are similarities in the conditions that give rise to TIP and human smuggling, there are distinct differences in the expectations and treatment of persons being smuggled and the victims of human trafficking. Additionally, there are significant statutory differences between TIP and human smuggling.

...

Human smuggling is the facilitation, transportation, attempted transportation or illegal entry of a person(s) across an international border, in violation of one or more countries [sic] laws, either clandestinely or through deception, such as the use of fraudulent documents. Often, human smuggling is conducted in order to obtain a financial or other material benefit for the smuggler, although financial gain or material benefit are not necessarily elements of the crime.

...

Unlike smuggling, which is often a criminal commercial transaction between two willing parties who go their separate ways once their business is complete, **trafficking** specifically targets the trafficked person as an object of criminal exploitation. The purpose from the beginning of the trafficking enterprise is to profit from the exploitation of the victim. It follows that fraud, force or coercion all plays a major role in trafficking.

It may be difficult to make a determination between smuggling and trafficking in the initial phase. Trafficking often includes an element of smuggling, specifically, the illegal crossing of a border. In some cases the victim [sic] may believe they are being smuggled, but are really being trafficked, as they are unaware of their fate. For example, there have been cases where women trafficked for sexual exploitation may have knowingly agreed to work in the sex industry and believed that they would have decent conditions and be paid a decent wage. What they did not realize is that the traffickers would take most or all

of their income, keep them in bondage, and subject them to physical force or sexual violence.

...

Conversely, persons being smuggled may sometimes willingly enter into “contracts” with the smugglers to work off a smuggling debt. Unless the aliens’ labor or services are enforced through the forms of coercion set forth in the trafficking statutes, such deferred repayment does not make these people trafficking victims. However, a work-based debt can be an “indicator” of trafficking, and such a situation could trigger further examination to determine whether the aliens are victims of trafficking or extortion.²

Florida Human and Sex Trafficking Laws

Section 787.06, F.S., provides that it is a second-degree felony for any person to knowingly:

- 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
- Benefit financially by receiving anything of value from participation in a venture that has subjected a person to forced labor or services.³

“Human trafficking” is defined in that section as “transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport.”⁴

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,” a second-degree felony. However, a person commits a first-degree felony if the offense of sex trafficking is committed against a person who is under the age of 14 or if such offense results in death.

Federal Human Smuggling Law

Federal law punishes human smuggling.⁵ The federal “failure to heave to” law provides an additional tool to combat human smuggling by providing criminal sanctions for failure to obey an order by federal officials to stop a vessel.⁶

Federal Human Trafficking Law

The Trafficking Victims Protection Act (TVPA), which first became law in 2000, was the first major comprehensive U.S. legislative effort to address modern-day slavery.

²The Human Smuggling and Trafficking Center, U.S. Department of State, *Fact Sheet: Distinctions Between Human Smuggling and Human Trafficking* (April 2006), available at <http://www.state.gov/g/tip/rls/fs/2006/69386.htm> (last visited February 24, 2009).

³ Section 787.06(3), F.S.

⁴ Section 787.06(2)(c), F.S.

⁵ 8 U.S.C. s. 1324 (2007). Several states also punish human smuggling. *See, e.g.*, laws of Arizona (Ariz. Rev. Stat. Ann. s. 13-2319 (2008)), Colorado (Colo. Rev. Stat. Ann. s. 18-13-128 (2008)), Oklahoma (Okla.St.Ann.tit.21, s. 446 (2008)), Tennessee (Tenn. Code Ann. s. 39-17-114(2008)), and Utah (Utah Code Ann. s. 76-10-2901(2008)).

⁶ 18 U.S.C. s. 2237 (2007). “It shall be unlawful...to knowingly fail to obey an order by an authorized Federal law enforcement officer to heave to that vessel.”

The 2000 TVPA:

- Created new laws that criminalized trafficking with respect to slavery, involuntary servitude, peonage, or forced labor;
- Permitted prosecution when nonviolent coercion is used to force victims to work in the belief they would be subject to serious harm;
- Permitted prosecution where the victim's service is compelled by confiscation of documents such as passports or birth certificates;
- Increased prison terms for all slavery violations from 10 years to 20 years and added life imprisonment where the violation involves the death, kidnapping, or sexual abuse of the victim;
- Required courts to order restitution and forfeiture of assets upon conviction;
- Enabled victims to seek witness protection and other types of assistance; and
- Gave prosecutors and agents new tools to get legal immigration status for victims of trafficking during investigation and prosecution.⁷

The TVPA was reauthorized in 2003 and 2005 and, on December 23, 2008, President Bush signed into law the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.⁸ The William Wilberforce Act enhances the tools available to prosecute traffickers and increases protection and services for U.S. citizen and foreign national victims in the U.S.⁹

III. Effect of Proposed Changes:

The bill creates s. 787.07, F.S., which punishes human smuggling.

The bill makes it unlawful for a person to transport into this 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 offense of human smuggling is punishable as follows:

- Third degree felony
 - If the transported individual is 18 or older.
- Second degree felony
 - If the transported individual is a minor; or
 - If the transported individual suffers great bodily harm or death.
- First degree felony
 - If the transported individual is a minor and suffers great bodily harm or death.

The bill provides that a person commits a separate offense for each individual or minor he or she transports into this state in violation of the section.

⁷United States Department of Justice, Civil Rights Division, *New Legislation, Victims of Trafficking and Violence Protection Act of 2000*, available at <http://www.usdoj.gov/crt/crim/traffickingsummary.php> (last visited February 27, 2009).

⁸ Pub. L. No. 110-457 (2008).

⁹ Polaris Project Action Center, *The Trafficking Victims Protection Reauthorization Act Passed Congress*, available at <http://actioncenter.polarisproject.org/take-action/advocate-for-policy> (last visited February 27, 2009).

The bill provides an effective date of October 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Constitution grants Congress the power to “establish a uniform Rule of Naturalization.”¹⁰ However, the Constitution does not automatically preempt state action relating to immigration. The Supreme Court has held that “the States do have some authority to act with respect to illegal aliens, at least where such action mirrors federal objectives and furthers a legitimate state goal.”¹¹

Arizona’s human smuggling law has been extensively reviewed by state and federal courts in that state. Arizona courts have rejected arguments that Arizona’s human smuggling law violated the Supremacy Clause of the U.S. Constitution and was preempted by federal law.¹²

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the official estimate of the prison bed impact of legislation, has not yet met to determine the potential prison bed

¹⁰ U.S. Const. art. I, s. 8, cl. 4.

¹¹ *Plyer v. Doe*, 457 U.S. 202, 225 (1982).

¹² See, e.g., *We Are America/Somos America, Coalition of Arizona v. Maricopa County*, --- F.Supp.2d ----, 2009 WL 86713 (D. Ariz. 2009) (slip op.); *State v. Flores*, 188 P.3d 706 (Ariz. Ct. App. 2008); *State v. Barragan-Sierra*, 196 P.3d 879 (Ariz. Ct. App. 2008).

impact, if any, of SB 502. However, a similar bill filed last session (CS/SB 624) was estimated by CJIC to have an insignificant prison bed impact.¹³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹³ Memorandum from Tommy Maggitas, Florida Department of Corrections, Office of Legislative Affairs, Re: SB 502-Human Smuggling-2009 (January 20, 2009).