

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 145 Sexual Exploitation

**SPONSOR(S):** Health & Human Services Access Subcommittee; Fresen

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 718

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	15 Y, 0 N, As CS	Batchelor	Schoolfield
2) Civil Justice Subcommittee			
3) Appropriations Committee			
4) Health & Human Services Committee			

### SUMMARY ANALYSIS

CS/HB 145 creates the Florida Safe Harbor Act and makes several amendments to protect and provide shelter for sexually exploited children. Specifically, the bill makes the following changes:

- The bill makes several amendments to definitions relating to sexual exploitation;
- Requires delivery of children alleged to be dependent and sexually exploited to short-term safe houses, if one is available;
- Provides rebuttable presumptions of law that placement in safe houses is necessary for sexually exploited children;
- Amends civil penalty for specified violations of prostitution from \$500 to \$5,000 and applies it to violators who solicit, induce, entice or procure another to commit prostitution, lewdness, or assignation and directs that \$4500 of the civil penalty be paid to DCF to fund safe houses and short-term safe houses;

The bill has an indeterminate fiscal impact.

The bill provides an effective date of July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### *Sexual Exploitation*

Current law references sexual exploitation in the definition of “sexual abuse of a child.”<sup>1</sup> Sexual exploitation of a child includes allowing, encouraging, or forcing a child to either solicit for or engage in prostitution; or engage in a sexual performance, as defined by Chapter 827, F.S.<sup>2</sup> Prostitution is the giving or receiving of the body for sexual activity for hire, excluding sexual activity assignment.<sup>3</sup> It is unlawful to offer to commit, to commit, or to engage in prostitution, lewdness, or assignment.<sup>4</sup> The prohibition against these acts exists without respect to the age of the person offering, committing, or engaging in prostitution.

A first offense for prostitution is a 2nd degree misdemeanor, a second offense is a 1st degree misdemeanor, and a third or subsequent offense is a third degree felony.<sup>5</sup> In addition to the criminal penalties, a civil penalty of \$500 can be assessed against individuals that solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignment.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

##### *Sex-Trafficking and Prostitution of Children*

It is estimated that about 293,000 American youth are currently at risk of becoming victims of commercial sexual exploitation. The majority of American victims of commercial sexual exploitation tend to be runaway youth living on the streets who are highly susceptible to become victims of prostitution. These children generally come from homes where they have been abused, or from families that have abandoned them, and often become involved in prostitution as a way to support themselves financially or to get the things they want or need.<sup>9</sup>

Other young people are recruited into prostitution through forced abduction, pressure from adults, or through deceptive agreements between parents and traffickers.<sup>10</sup> In a study conducted at the University of New Hampshire in 2009, researchers found that among a sampling of law enforcement agencies for information concerning youth involved in prostitution, of the estimated 1,450 arrests /detentions for crimes related to juvenile prostitution in the U.S. in 2005, 95% involved third party

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<sup>1</sup> s. 39.01(67), F.S.

<sup>2</sup> s. 39.01(67)(g), F.S.

<sup>3</sup> s. 796.07(1)(a), F.S.

<sup>4</sup> s. 796.07(e), F.S.,

<sup>5</sup> s. 796.07(4), F.S.,

<sup>6</sup> s. 769.07(6), F.S.

<sup>7</sup> s. 796.045, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*; Richard J. Estes and Neil Alan Weiner, Commercial Sexual Exploitation of Children in the U.S, Canada and Mexico, University of Pennsylvania (2001), available at [www.sp2.upenn.edu/~restes/CSEC\\_Files/Exec\\_Sum\\_020220.pdf](http://www.sp2.upenn.edu/~restes/CSEC_Files/Exec_Sum_020220.pdf). (last visited 3/19/11)

<sup>10</sup> Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff); Francis T. Miko & Grace Park, Trafficking in Women and Children: The U.S. and International Response, p. 7. (Updated July 10, 2003), at <http://www.usembassy.it/pdf/other/RL30545.pdf>. (last visited 3/19/11).

exploiters, 31% were for what they labeled solo types of prostitution cases, and 12% involved sexual exploitation.<sup>11</sup>

Third party or pimp-controlled commercial sexual exploitation of children is linked to escort and massage services, private dancing, drinking and photographic clubs, major sporting and recreational events, major cultural events, conventions, and tourist destinations. About one-fifth of these children become involved in nationally organized crime networks and is trafficked nationally. They are transported around the United States by a variety of means – cars, buses, vans, trucks or planes, and are often provided counterfeit identification to use in the event of arrest.<sup>12</sup> The average age at which girls first become victims of prostitution is 12-14; for boys and transgender youth it is 11-13.<sup>13</sup>

### *Services Currently Available for Shelter*

If a child in the Department of Children and Family Services' (DCF) care is missing, the case worker fills out a Missing Child Report, which details the child's disappearance, including involvement in prostitution.<sup>14</sup>

DCF acknowledges that minimal and inappropriate shelters exist for victims of sexual exploitation since victims in runaway shelters or group homes can continue to be psychologically manipulated and return to the control of the trafficker. Foster homes, group homes, and shelters are not ideal for several reasons including the fact that these residences are not equipped to deal with sexual exploitation trauma and also that the trafficker/pimp could easily find the child and threaten to harm the foster family or residents unless contact with the child is permitted.<sup>15</sup>

DCF may also use the State Inpatient Psychiatric Placement (SIPP), which provides secure housing and services. The program includes lengthy assessment that must be performed prior to placement.<sup>16</sup> Unfortunately, exploited children tend to leave before services and placement is finalized.<sup>17</sup>

Services are available through the Children In Need of Services (CINS) program to provide short-term shelter, counseling, services, and case management in one of the 28 youth shelters statewide that are operated by the Department of Juvenile Justice (DJJ).<sup>18</sup> These shelters are primarily voluntary and a court may order the child to stay in shelter for a period no longer than 120 days.<sup>19</sup> Even under this longer stay option, only 10 are available statewide.<sup>20</sup> But since most sexually exploited children are adjudicated dependent, they would not be eligible for CINS service.<sup>21</sup>

If a judge finds that a child is either in contempt of the court or in need of an extremely safe treatment environment, the judge may place the child in a locked setting for up to 120 days.<sup>22</sup> Reductions in funding have resulted in fewer than 10 children served per year under this type of physically secure placement.<sup>23</sup> There is simply not enough availability to consider this placement as a viable option for exploited children.

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<sup>11</sup> Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff); Kimberly J. Mitchell, David Finkelhor and Janis Wolak, *Conceptualizing Juvenile Prostitution as Child Maltreatment: Findings from the National Juvenile Prostitution Study*, p.22-26, University of New Hampshire Sage Publications

<sup>12</sup> Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff); Richard J. Estes and Neil Alan Weiner, *Commercial Sexual Exploitation of Children in the U.S, Canada and Mexico*, pp. 7-8. University of Pennsylvania (2001), available at [www.sp2.upenn.edu/~restes/CSEC\\_Files/Exec\\_Sum\\_020220.pdf](http://www.sp2.upenn.edu/~restes/CSEC_Files/Exec_Sum_020220.pdf).

<sup>13</sup> *Id*

<sup>14</sup> Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff).

<sup>15</sup> *Id*

<sup>16</sup> s. 39.407, F.S.

<sup>17</sup> Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff).

<sup>18</sup> *Id*

<sup>19</sup> s. 984.226, F.S.

<sup>20</sup> Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff).

<sup>21</sup> *Id*

<sup>22</sup> s. 984.226, F.S.

<sup>23</sup> Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff).

## **Effect of Proposed Changes**

The bill creates the Florida Safe Harbor Act in s. 39.001 (4), F.S., to provide special care and services to all sexually exploited children in the dependency process. One of the policy changes the bill makes is creating a rebuttable presumption that children have been sexually exploited when committing acts such as prostitution. Under this change, if a law enforcement officer encounters a child for an act of prostitution, the officer must presume the child has been sexually exploited and must transfer the child to a short-term safe house, if one is available.

### *Definitions*

Specifically, the bill amends the following definitions in s. 39.01, F.S:

- “abuse” is amended so that it includes sexual abuse.
- “child who is found to be dependent” is amended so it includes children that have been sexually exploited and have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care. The effect of this change will place sexually exploited children within dependency actions.
- “sexual abuse of a child” is amended so that sexual exploitation includes the act of a child offering to engage in or engaging in prostitution or sexual acts. The definition is also amended to include participation in sex trafficking as an act of sexual exploitation of a child. The effect of these changes to the definition of “sexual exploitation of a child” will create additional grounds for sexual exploitation so that an individual is also held responsible for the voluntary act of the child offering to engage in or engaging in prostitution.

### *Transfer to a Short-term Safe House*

The bill amends s. 39.401, F.S., by requiring law enforcement officers to deliver a sexually exploited child to a short-term safe house if one is available. The effect of this change will require a law enforcement officer to deliver a youth who is being sexually exploited to a safe house, regardless of whether the child is a repeat offender or voluntarily engaging in prostitution.

### *Shelter Placement*

The bill amends s. 39.402, F.S., by creating a rebuttable presumption on placement of a sexually exploited child in a short-term safe house. The bill requires DCF, at the hearing to continue shelter care, to establish probable cause that the child has been sexually exploited, and that placement in a short-term safe house is most appropriate. The bill also adds sexual exploitation to the list of conditions which show reasonable effort by DCF to prevent or eliminate the need for removal. The effect of these changes will get a sexually exploited child into shelter and treatment for prostitution rather than processed through the criminal justice system.

### *Disposition Hearings*

The bill also amends s. 39.521, F.S., to add sexual exploitation as one of the reasons a child cannot safely remain at home in findings by the court during a disposition hearing. Additionally, the bill requires the court to commit a victim of sexual exploitation to a safe house when the child has been adjudicated dependent. The effect of these changes will provide cause for the court in a dependency action to remove a child from the home who has been sexually exploited to place the child in a safe house and therefore removal is warranted.

### *Safe-Harbor Placement*

The bill creates s. 39.524, F.S., relating to safe-harbor placement. The section requires any child 6 years of age or older who has been found to be a victim of sexual exploitation to be assessed for placement in a safe house, and if placement is warranted, it shall be granted, if available. It also requires all safe houses that receive children to report to DCF its success in achieving permanency for those children. It also requires DCF to report to the Legislature on the placement of children in safe homes during the year

### *Safe Harbors for Sexually Exploited Children*

The bill also creates s. 409.1678, F.S., relating to safe harbor for children who are victims of sexual exploitation. The bill creates definitions for:

- “child advocate” for sexually exploited children to ensure short-term safe houses are employed by individuals trained to best assist the child.
- “safe house” as a living environment that has set aside gender-specific, separate and distinct living quarters for sexually exploited children who have been adjudicated dependent or delinquent and need to reside in a secure facility with 24-hour-awake staff. The safe house is required to be licensed by DCF as a child-caring agency under s. 409.175, F.S.
- “secure” means that a child is supervised 24 hours a day by staff who are awake while on duty.
- “sexually exploited child” to mean a dependent child who has suffered sexual abuse, as defined in 39.01(67)(g).
- “short-term safe house” means a shelter operated by a licensed child-caring agency, includes runaway youth center, gender specific, separate living quarters for sexually exploited children, and provides care and counseling to exploited children.

### *Short-term Safe and Long-term Safe Houses*

Also in s. 409.1678, F.S., the bill directs each of the DCF circuits to address the needs of sexually exploited children as a component of a master plan. The bill provides that the lead agency, not-for-profit agency, or local government entity that is providing safe house services is responsible for security, counseling, residential care, food, clothing etc for children who are placed there. The lead agency or other service provider has legal authority over the child as provided in Chapter 39 and has authority to utilize resources as needed for the child’s health and education. The bill also provides that the local circuit administrator may contract with local law enforcement, to the extent funds are available to train officers working with sexually exploited children.

### *Prohibitions of Prostitution*

The bill amends s. 796.07, F.S amending the civil penalty that may be assessed against violators of specified provisions related to prostitution. Currently, a civil penalty of \$500 must be assessed against a person who violates s. 796.07(2)(f), by soliciting, inducing, enticing, or procuring another to commit prostitution, lewdness, or assignation. The bill will amend the section by increasing the civil penalty to \$5,000 and directing that \$4,500 of the penalty be paid to DCF to fund safe houses and short-term safe houses and the remaining \$500 shall be paid to the circuit court administrator. The effect of these changes creates a proposed funding source for the safe houses for sexually exploited children.

### *Eligibility for Award*

The bill amends s. 960.065, F.S., to allow victims of sexual exploitation to be eligible for compensation (awards) per Chapter 960, Victims Assistance.

### *Release or delivery from Custody*

The bill amends s. 985.115, F.S., to include short term safe house as an option for the release of a child after they have been taken into custody.

### *Juvenile Delinquency*

The bills amends s. 985.145, F.S. and s. 985.15, F.S., by prohibiting juvenile probation officers and the state attorney from filing a petition for delinquency for an act related to prostitution unless the child has been previously adjudicated delinquent.

## B. SECTION DIRECTORY:

**Section 1:** Provides a name for the act.

**Section 2:** Amends s. 39.001, F.S., relating to purposes and intent; personnel standards and screening.

**Section 3:** Amends s. 39.01, F.S., relating to definitions.

**Section 4:** Amends s. 39.401, F.S., relating to taking a child alleged to be dependent into custody; law enforcement officers and authorized agents of the department.

**Section 5:** Amends s. 39.402, F.S., relating to placement in a shelter.

**Section 6:** Amends s. 39.521, F.S., relating to disposition hearings; powers of disposition.

**Section 7:** Creates s. 39.524, F.S., relating to safe-harbor placement.

**Section 8:** Creates s. 409.1678, F.S., relating to safe harbor for children who are victims of sexual exploitation.

**Section 9:** Amends s. 796.07, F.S., relating to prohibiting prostitution, etc.; evidence; penalties; definitions.

**Section 10:** Amends s. 960.065, F.S., relating eligibility for awards.

**Section 11:** Amends s. 985.115, F.S., relating to release or delivery from custody.

**Section 12:** Amends s. 985.145, F.S., relating to responsibilities of intake screenings and assessments.

**Section 13:** Amends s. 985.15, F.S., relating to filing decisions.

**Section 14:** Provides an effective date of July 1, 2011.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

A new revenue source is created in this bill which is from a civil penalty of \$4,500 related to prostitution. The revenues are generated from violations related to prostitution.

#### 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:

The proposed legislation states that costs for safe houses are contingent on available appropriations in the General Appropriations Act. DCF reports that other similar residential facilities under the department's purview cost \$350 per child per day.<sup>24</sup>

The State Courts System cannot determine the fiscal impact on from a potential increase in judicial workload due to lack of data.<sup>25</sup>

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 23, 2011, the Health and Human Services Access Subcommittee adopted a strike all amendment to House Bill 145. The amendment:

- deletes the contracting and "availability of funds" requirements for short term and long term safe houses;
- replaces the term "district" with circuit to conform to current DCF language;
- deletes changes to s. 322.28, F.S.;
- removes provisions in s. 796.07, F.S., making certain acts, relating to prostitution, unlawful only if the person who committed the act was 16 years of age or older and removes provisions that restrict civil penalties for using or threatening to use a deadly weapon during specified offenses.

The bill was reported favorably as a Committee Substitute. This analysis reflects the committee substitute.

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<sup>24</sup> Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff).

<sup>25</sup> Office of the State Courts Administrator 2011 Judicial Impact Statement (2/2/2011). (on file with committee staff).