

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/CS/HB 1355 (CS/CS/SB 1816)	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Appropriations Committee; Health & Human Services Committee; Judiciary Committee; Dorworth and others (Budget Subcommittee on Criminal; Civil Justice Appropriations; Criminal Justice; Benacquisto and others)	117 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/CS/SB 1816	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/CS/CS/HB 1355 was passed by the House on March 5, 2012. The bill was amended by the Senate on March 8, 2012, and subsequently passed by the House on the same date. The bill includes portions of CS/HB 1285. The bill amends current law for mandatory reports of child abuse and requires any person to report known or reasonably suspected abuse of a child by a person other than a parent, legal custodian, caregiver, or other person responsible for the welfare of the child. The bill also requires any person who knows or has reasonable suspicion that a child is a victim of childhood sexual abuse or is a victim of a juvenile sexual offender to report that knowledge or reasonable suspicion. A report of child abuse required by the bill must be accepted by the Florida Abuse Hotline (hotline), maintained by the Department of Children and Families (DCF), and forwarded to the appropriate sheriff's office. DCF will continue to only investigate reports of abuse by a parent, legal custodian, caregiver, or other person responsible for the child's welfare.

The bill requires the DCF to enable the hotline to accept reports of known or suspected child abuse through web-based chat. Also, the DCF is directed to conduct a study on the feasibility of adding text and short message service formats as a means for the hotline to accept and process reports of abuse. DCF must also update the web-based reporting form for the hotline to receive appropriate information and allow the DCF to assess need and the appropriate response to the need. The bill requires the DCF to partner with community-based organizations and public service campaigns to promote public awareness of the hotline.

The bill imposes a \$1,000,000 fine on public and private colleges, universities and schools whose personnel or law enforcement agencies fail to report certain child abuse taking place on campus or at an event or function sponsored by the college, university, or school. The bill also specifies the entities that will impose the fine, depending on the education institution involved in the failure to report child abuse as required by the bill.

The bill expands the scope of victims who are eligible to receive monetary relocation assistance to include a victim of sexual battery, and appropriates \$1.5 million from the General Revenue Fund for that purpose.

The bill increases criminal penalties by reclassifying certain violations involving sexual conduct with minors. The bill also defines "aggravated child abuse" and "mental injury" for the purpose of criminalizing aggravated child abuse and providing for the prosecution of persons who abuse a child and cause mental injury, without an accompanying physical injury.

The bill will have a significant fiscal impact on state government. The bill appropriates sufficient moneys and full time equivalent positions to account for the expected increase in DCF's workload.

The bill was approved by the Governor on April 27, 2012, ch. 2012-155, Laws of Florida. The effective date of the bill is October 1, 2012.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Present Situation

##### Background

A study conducted in 2008 indicated that an estimated 4% to 16% of children are physically abused each year in high-income nations including the United States. Additionally, as many as 15% of children are neglected, and up to 10% of girls and 5% of boys suffer severe sexual abuse. Although it is difficult to measure, researchers believe that as few as 1 in 10 of those instances of abuse are actually confirmed by social-service agencies.<sup>1</sup> Recent national events have centered on issues with adults failing to report known instances of ongoing child abuse.

##### Reporting Child Abuse

Section 39.201, F.S., establishes reporting requirements for instances of child abuse. Specifically, the law mandates that any person with knowledge or reasonable suspicion of child abuse report the following circumstances:

- A child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare<sup>2</sup>; or
- A child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care.

Section 39.201(2), F.S., prescribes the method of reporting child abuse. Instances of child abuse as described by s. 39.201(1), F.S., must be reported immediately to the department's<sup>3</sup> central abuse hotline. Failure to report known or suspected child abuse pursuant to s. 39.205(1), F.S., is a first degree misdemeanor<sup>4</sup> if the person knowingly or willfully failed to report, or knowingly or willfully prevented another person from reporting such abuse. In addition to reporting, certain occupations are required by law to provide their names to hotline staff.<sup>5</sup> All other reporters may remain anonymous.

##### Relocation Assistance for Victims of Domestic Violence

Section 960.198, F.S., authorizes the Department of Legal Affairs ("DLA") to award monetary payment to a victim of domestic violence in order to provide relocation assistance, under certain conditions. Specifically, the law authorizes DLA to award a victim of domestic violence who needs immediate assistance to escape from a domestic violence environment:

- a) A one-time payment not exceeding \$1,500 on any one claim; and
- b) A lifetime maximum of \$3,000.

Certain preconditions must be met before DLA may grant an award:

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<sup>1</sup> See Tiffany Sharples, *Most Child Abuse Goes Unreported*, Time Health, (Dec. 2, 2008), available at <http://www.time.com> (search "unreported child abuse" (last visited Jan. 19, 2012)).

<sup>2</sup> "Other person responsible for a child's welfare" includes many enumerated parties, including employees of any school, day care center, residential home, facility, institution, or agency. The definition exempts law enforcement officers and employees of municipal or county detention facilities acting in an official capacity, except as otherwise provided in the subsection. Section 39.01(47), F.S.

<sup>3</sup> "Department" means the Department of Children and Family Services.

<sup>4</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>5</sup>S. 39.201(1)(b), F.S.

- a) There must be proof that a domestic violence offense was committed;
- b) The domestic violence offense must be reported to the proper authorities;
- c) The victim's need for assistance must be certified by a domestic violence center in Florida; and
- d) The center certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan.

### Reclassification of Prostitution Crimes Involving Minors

Florida law presently prohibits conduct involving prostitution under chapter 796, F.S.

- Causing a Minor to Become Involved With Prostitution. Sections 796.03 and 796.035, F.S., prohibit a person from causing a minor to become involved in prostitution and other sexual activity. Specifically, under s. 796.03, F.S., it is a second degree felony<sup>6</sup> for a person to procure for prostitution, or cause to be prostituted, any person who is under the age of 18.

Under s. 796.035, F.S., it is a first degree felony<sup>7</sup> for any parent, legal guardian, or other person having custody or control of a minor, to sell or otherwise transfer custody or control of such minor, or offer to sell or otherwise transfer custody of the minor with knowledge that the minor will engage in prostitution, perform naked for compensation, or otherwise participate in the trade of sex trafficking as a consequence of the sale or transfer.

- Forcing, Compelling, or Coercing Prostitution. Under s. 796.04, F.S, it is a third degree felony<sup>8</sup> for a person to force, compel, or coerce another to become a prostitute.
- Sex Trafficking. Under s. 796.045, F.S, it is a second degree felony<sup>9</sup> for a person to recruit, entice, harbor, transport, provide, or obtain by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution. It is a first degree felony<sup>10</sup> if the offense is committed against a person under the age of 14 or if the offense results in death.
- Deriving Support from the Proceeds of Prostitution. Under s. 796.05, F.S., it is a third degree felony for a person who knows or has reasonable belief that another is engaged in prostitution to live or derive support or maintenance from what is believed to be the earnings or proceeds of such person's prostitution.
- Renting Space to be Used for Lewdness, Assignment, or Prostitution. Under s. 796.06, F.S., it is a second degree misdemeanor for the first violation, and a first degree misdemeanor for a subsequent violation, for a person to let or rent any place, structure, or part thereof, trailer or other conveyance with knowledge that it will be used for the purpose of lewdness, assignment, or prostitution.
- Definitions
  - "Assignment" means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.<sup>11</sup>
  - "Lewdness" means any indecent or obscene act.<sup>12</sup>
  - "Prostitution" means the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.<sup>13</sup>

<sup>6</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>7</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>8</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>9</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>10</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>11</sup> Section 796.07, F.S.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

- “*Sexual activity*” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.<sup>14</sup>

## Effect of Proposed Changes

### Reporting Child Abuse

The bill adds to current mandatory reporting requirements in s. 39.201, F.S., by requiring reporting of known or reasonably suspected abuse of a child by any adult. The change removes the limitation that the only abuse reported to the Florida Abuse Hotline must be perpetrated a parent, legal custodian, caregiver, or other person responsible for the welfare of a child. The bill also requires that a person who knows, or has a reasonable suspicion, that a child is the victim of childhood sexual abuse or is the victim of a juvenile sexual offender, as defined in the bill, report that knowledge or reasonable suspicion to the Florida Abuse Hotline. DCF estimates this change will result in at least 40,000 additional calls or a 10 percent increase. Current law limits DCF responsibilities to calls involving abuse by a parent, legal custodian, caregiver, or other person responsible for the child’s welfare.

The bill requires the central abuse hotline to accept any call reporting child abuse, abandonment, or neglect by someone other than a parent, legal custodian, caregiver, or other person responsible for the child’s welfare, and to forward the call to the appropriate sheriff’s office for further investigation. The bill also restates current law regarding how the hotline handles calls regarding juvenile sexual offenders age 12 and younger and age 13 and older. DCF will continue to only investigate reports of abuse by a parent, legal custodian, caregiver, or other person responsible for the child’s welfare.

The bill adds web-based chat as a method for receiving reports of child abuse, abandonment, or neglect by the central abuse hotline. The bill also requires DCF to update the web-based form used to report child abuse, abandonment or neglect. In order to make the form more useful for investigatory purposes:

- The form must include qualifying questions which are designed to elicit more information responses to more accurately assess need and the appropriate response to such need;
- The form must indicate which response fields must be filled out in order to be considered completed; and
- The form must allow a reporter to save the document and return to it at a later date to complete all information and submit it to the central abuse hotline.

The bill mandates that DCF promote public awareness regarding the central abuse hotline. DCF must use community-based partner organizations and public service campaigns to provide information to the public about the hotline. Also, the bill directs DCF to conduct a study to examine the feasibility of adding text and short message service reporting capabilities to the Florida Abuse Hotline.

The knowing and willful failure of a person, who is required to report known or suspected child abuse, abandonment, or neglect is elevated from a first degree misdemeanor to a third degree felony. As a result, the potential prison sentence is raised from 1 year to 5 years<sup>15</sup>, and the potential fine is raised from a maximum of \$1,000 to a maximum of \$5,000.<sup>16</sup>

The bill appropriates \$2,164,016 in recurring General Revenue and \$281,000 in non-recurring funds to establish 47 full-time equivalent positions estimated by DCF to be necessary to handle the anticipated

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<sup>14</sup> *Id.*

<sup>15</sup> S. 775.082(3)(d) and (4)(a), F.S.

<sup>16</sup> S. 775.083(1)(c) and (d), F.S.

increase in workload at the Florida Abuse Hotline due to the expansion of mandatory reporting of child abuse required by the bill.

### Educational Institutions

The bill creates subsections 39.205(3) and (4), F.S., which provide penalties for Florida educational institutions whose personnel fail to report certain child abuse taking place on the campus of the institution or during an event or function sponsored by the institution. The bill subjects the institution to a \$1 million fine for each failure to report child abuse, abandonment, or neglect.<sup>17</sup> The fine is to be assessed by the State Board of Education, the Board of Governors, or the Commission for Independent Education, depending on the educational institution involved in the failure to report child abuse.

Specifically, these penalties apply to:

- (1) Any Florida College System institution, state university, or nonpublic college, university, or school<sup>18</sup> whose administrators knowingly and willfully fail to report, or knowingly and willfully prevent another from reporting known or suspected child abuse, abandonment, or neglect committed on the property of the institution, university, college, or school, or during an event or function sponsored by the institution, university, college, or school; and
- (2) The law enforcement agency of any Florida College System institution, state university, or nonpublic college, university, or school<sup>19</sup> that fails to report any known or suspected child abuse, abandonment, or neglect committed on the property of the institution, university, college, or school, or during an event or function sponsored by the institution, university, college, or school.

The bill also creates subsection (5) of s. 39.205, F.S., which grants the institution, university, college, or school the right to challenge the determination by the Board of Governors that it acted knowingly and willfully and to challenge the imposition of a fine pursuant to sections 39.205(3), F.S., or 39.205(4), F.S. The appeal process will be conducted through administrative hearing, pursuant to the provisions of s. 120.57, F.S. The bill provides that a knowing and willful act is presumptively established if it is found that the administration of the institution, university, college, or school had actual knowledge and information of known or suspected child abuse.

The bill requires DCF to collect and analyze, in separate reports, statistics regarding abuse and sexual abuse that is reported from, or occurred on, any campus of a Florida College System institution, state university, or nonpublic college, university, or school, as defined in s. 1000.21, F.S., or s. 1005.02, F.S. The requirement is similar to the duty of DCF to create aggregate statistical reports, using data compiled through the central abuse hotline, regarding trends and patterns of child abuse, abandonment, and neglect.

Lastly, the bill requires elementary, middle, and high school teachers to participate in a continuing education program provided by DCF focused on identifying and reporting child abuse and neglect. This continuing education topic would be in addition to current continuing education requirements for teachers.

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<sup>17</sup> "All state funding" includes the Florida Resident Access Grant Program.

<sup>18</sup> As defined in ss. 1000.21, F.S., or 1005.02, F.S.

<sup>19</sup> *Id.*

## Relocation Assistance for Victims of Sexual Battery

The bill expands the scope of victims who are eligible to receive monetary relocation assistance from DLA to include victims of sexual battery. It authorizes DLA to award a victim of sexual battery<sup>20</sup> who needs relocation assistance:

- a) A one-time payment not exceeding \$1,500 on any one claim; and
- b) A lifetime maximum of \$3,000.

Certain preconditions must be met before DLA may grant an award:

- a) There must be proof that a sexual battery offense was committed.
- b) The sexual battery offense must be reported to the proper authorities.
- c) The victim's need for assistance must be certified by a certified rape crisis center in this state.
- d) The center certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan.
- e) The act of sexual battery must be committed in the victim's place of residence or in a location that would lead the victim to reasonably fear for his or her continued safety in the place of residence.

To prevent duplicate payments, the bill requires DLA to deny any claim for relocation payment for a sexual battery claim if it has previously approved or paid out a domestic violence relocation claim, pursuant to s. 960.198, F.S., to the same victim for the same incident.

The bill includes a relocation assistance fund for victims of sexual battery that is separate from the relocation assistance fund for victims of domestic violence. The bill appropriates \$1.5 million in nonrecurring funds from the General Revenue Fund to DLA for state FY 2012-2013 for the victims of sexual battery relocation assistance fund.

## Reclassification of Crimes Involving Minors

The bill creates s. 796.036, F.S., which provides for reclassification of certain violations involving minors.<sup>21</sup> Specifically, the bill provides for reclassification of violations "in which a minor engages in prostitution, lewdness, assignation, sexual conduct, or other conduct as defined in or prohibited [by chapter 796], but the minor is not the person charged with the violation." The bill provides for such reclassification as follows:

- A second degree misdemeanor becomes a first degree misdemeanor;
- A first degree misdemeanor becomes a third degree felony;
- A third degree felony becomes a second degree felony;
- A second degree felony becomes a first degree felony; and
- A first degree felony becomes a life felony.

## Aggravated Child Abuse and Mental Injury

The bill amends s. 827.03, F.S., to define the term "mental injury" as "injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability of the child to function within the normal range of performance and behavior as supported by expert testimony." This definition significantly mirrors the definition found in s. 39.01, F.S.

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<sup>20</sup> As defined in s. 794.011, F.S.

<sup>21</sup> The new section created by the bill specifically states it does not apply to violations of ss. 796.03 and 796.035, F.S., presumably because those sections already apply to prohibited conduct involving minors.

The bill also specifies that physicians and psychologists can only provide expert testimony in criminal child abuse cases if they meet the following requirements:

- A physician may not provide expert testimony in a criminal child abuse case unless the physician is licensed under chapters 458 or 459, F.S., or has obtained certification as an expert witness pursuant to s. 458.3175, F.S.
- A physician may not provide expert testimony in a criminal child abuse case regarding mental injury unless the physician licensed under chapters 458 or 459, F.S., who has completed an accredited residency in psychiatry, or has obtained certification as an expert witness pursuant to s. 458.3175.
- A psychologist may not give expert testimony in a criminal child abuse case regarding mental injury unless the psychologist is licensed under chapter 490, F.S.

The bill also amends the definition of the terms “victim” and “crime” contained in chapter 960, F.S. (the victim assistance chapter). The definition of the term “victim” is expanded to include a person younger than 18 who was the victim of a felony or misdemeanor offense of child abuse that resulted in a mental injury, as defined in s. 827.03, F.S., but who was not physically injured. The term “crime” is amended to include felonies or misdemeanors committed by an adult or a juvenile which result in mental injury to a person less than 18 years of age who was not physically injured by the criminal act. The mental injury must be verified by a psychologist licensed under ch. 490, F.S., a physician who is licensed under ch. 458 or 459, F.S., and has completed an accredited residency in psychiatry, or a physician who has obtained expert witness certification pursuant to s. 458.3175, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

##### Impact to Florida Abuse Hotline

DCF calculated the impact of the provisions of the bill to the workload of the central abuse hotline. The DCF used the following data and calculations to conclude that the bill has a fiscal impact to the DCF, in regard to the hotline, in the amount of \$2,100,821.<sup>22</sup>

Florida's population of children represents 21.3% of the entire population per the 2010 Census or 4,004,679 children.

According to a national survey, in 2005:

- 1 in 2 children will experience physical assault.
- 1 in 12 children will experience sexual victimization.
- 1 in 7 children will experience maltreatment (excluding corporal punishment).
- 1 in 4 children experience property victimization.
- 1 in 3 children are witnesses of victimization of others/indirect victimization.<sup>23</sup>

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<sup>22</sup> Florida Department of Children and Families, *HB 1355-Fiscal Analysis for the Department of Children and Families Hotline*, February 1, 2012 (communicated in email to Health and Human Services Committee staff on the same date, on file with the Committee).

Calculating Hotline call volume increase based on the projected number of children who are victims of physical assault (1 in 2, or 50 percent) means approximately 2,000,000 incidents would be reported to the Hotline annually. This projection is exclusive of children who experience sexual abuse or other types of child maltreatment.

Four percent of children who are victims of physical assaults report that the perpetrator is a stranger. This calculates to approximately 80,000 child victims of physical assaults at the hands of strangers on an annual basis in Florida. If 50 percent of this population is reported to the Hotline, this would calculate to an additional 40,000 calls annually, a 10 percent increase of total calls to the Hotline.<sup>24</sup>

Based on the Hotline staffing mode currently used to determine required staffing levels, this additional call volume will require 42 additional Hotline counselors. Verint, the Hotline's forecasting and scheduling software, looks at historical call patterns in a 24/7 environment, taking into account peaks and valleys, to project the staff needed to have a 99 percent answer rate within 60 seconds. Based on a 10 percent increase in call volume, Verint projected an increase of 42 Hotline Counselors to keep the service level at a 99 percent answer rate within 60 seconds. The Hotline has an 8:1 counselor/supervisor ratio; therefore an additional 5 FTE Hotline Supervisor positions would also be needed. Based on this analysis, the fiscal impact of the increased call volume is as follows:

- 42 counselors inclusive of benefits = \$1,692,021
- 5 supervisors inclusive of benefits = \$267,800
- Workstation, software licenses, drug testing and background screening for 47 employees (\$3,000 per employee) = \$141,000

#### Web-based Chat Requirement

The DCF has included web chat functionality in the requirement matrix for the Hotline Redesign which was funded last year. Therefore, the DCF does not anticipate further fiscal impact as a result of this requirement.<sup>25</sup>

#### Feasibility Study for Text Messaging

Funding would enable the Department to hire a consultant to conduct a feasibility study on the potential use of text messaging as a means of reporting allegations of abuse and neglect to the Hotline. Funding for the feasibility study will be a one-time fee of \$90,000 and non-recurring.<sup>26</sup>

#### Relocation Assistance

The bill authorizes DLA (under the Office of the Attorney General) to award a monetary sum of \$1,500 to a victim of sexual battery once certain preconditions are met. The 2010 Crime in Florida Annual Report indicated that there were 9,885 Forcible Sex Offenses. However, it is unknown how many victims would qualify or request relocation assistance.

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<sup>23</sup> Finkelhor, D., Turner, H.A., and Hamby, S.L. (2005), *The victimization of children and youth: A comprehensive, national survey*, Child Maltreatment, 10(1): 5-25 (CV73).

<sup>24</sup> During FY 10-11, the Hotline received 407,000 calls; see *supra* at FN 21.

<sup>25</sup> Florida Department of Children and Families, *HB 1355-Revised Fiscal Impact for Strike-All*, communicated via email to staff of the Health and Human Services Committee on February 24, 2012 (on file with the Committee).

<sup>26</sup> *Id.*; according to DCF, Joe Vastole, IT Applications Manager for DCF, provided this information.



The bill funds relocation assistance awards by appropriating \$1.5 million in nonrecurring funds from the General Revenue Fund to the DLA for state FY 2012-2013.

#### Educational Institutions

The bill provides penalties for Florida educational institutions whose personnel or law enforcement agencies fail to report certain child abuse taking place at the institution. The bill subjects the institution to a \$1 million fine for each failure to report.

#### Training for All Certified School Personnel

The Department estimates a need of \$50,000 (non-recurring) for start up costs in order to obtain the course materials and support for training curriculum. The Department estimates a need of \$4,500 (recurring) for maintenance and support after the first year.<sup>27</sup>

#### Impact on State Prison Beds

The bill increases penalties for certain criminal offenses involving minors, many of which carry potential prison sentences. A request has been made to the Criminal Justice Impact Conference to provide an estimate of any fiscal impact on state prison beds.

#### Total Fiscal Impact

The bill appropriates \$2,164,016 in recurring funds and \$281,000 in non-recurring funds, along with 47 FTEs, to cover additional costs associated with mandatory reporting requirements. The bill also appropriates \$1,500,000 in non-recurring funds for costs associated with relocation assistance for victims of sexual battery.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill increases penalties for certain prostitution related criminal offenses. It is unknown what impact this will have on local jail beds.

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

None.

#### D. FISCAL COMMENTS:

None.

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<sup>27</sup> *Id.*