

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 1880

INTRODUCER: Senator Flores

SUBJECT: Human Trafficking

DATE: January 24, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The major features of the bill are described as follows:

- Authorizes the Office of Statewide Prosecution to investigate and prosecute human trafficking violations and other violations under ch. 787, F.S., if other requirements of s. 16.56, F.S., are also met.
- Repeals s. 787.05, F.S., which punishes unlawfully obtaining labor and services, and s. 796.045, F.S., which punishes sex trafficking.
- Makes the current human trafficking offense a first degree felony (current law: second degree felony), and creates several new human trafficking offenses (which are first degree felonies, first degree felonies punishable by up to life imprisonment, or life felonies) and provides directives on ranking these offenses as Level 9 or Level 10 offenses.
- Authorizes seizure and forfeiture of any real or personal property that was used, was attempted to be used, or was intended to be used in violation of s. 787.06, F.S., subject to the provisions of the Florida Contraband Forfeiture Act.
- Raises the degree of the offense of human smuggling from a first degree misdemeanor to a third degree felony, provides for repeat offender sanctions under s. 775.084, F.S., and provides a directive to rank the offense as a Level 4 offense.
- Modifies the current first degree felony offense of selling or buying minors into sex trafficking or prostitution to delete a reference and element pertinent to sex trafficking and provides a directive to rank the offense as a Level 9 offense.
- Authorizes the impaneling of a statewide grand jury regarding any violation of ch. 787, F.S., and any offense related to such violation if other requirements of s. 905.34, F.S., are also met.

- Provides that the Governor, the Attorney General, the Statewide Prosecutor, or any state attorney may authorize an application to a judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications by the Florida Department of Law Enforcement (FDLE) or any law enforcement agency having responsibility for the investigation of the offense as to which the application is made when such interception may provide or has provided evidence of the commission of a violation of s. 787.06, F.S.

This bill substantially amends ss. 16.56, 90.404, 772.102, 787.06, 787.07, 794.056, 796.035, 895.02, 905.34, 934.07, and 938.085, F.S.; and repeals ss. 787.05 and 796.045, F.S.

II. Present Situation:

Human Trafficking Statute

Section 787.06, F.S., punishes human trafficking, which is defined in the statute as transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport. The specific offense that is punished as a second degree felony involves knowingly:

- Engaging, or attempting to engage, in human trafficking with the intent or knowledge that the trafficked person will be subjected to forced labor or services; or
- Benefiting financially by receiving anything of value from participation in a venture that has subjected a person to forced labor or services.

The statute defines “forced labor or services” as labor or services obtained from a person by:

- Using or threatening to use physical force against that person or another person;
- Restraining, isolating, or confining or threatening to restrain, isolate, or confine that person or another person without lawful authority and against her or his will;
- Using lending or other credit methods to establish a debt by that person or another person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
- Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of that person or another person;
- Causing or threatening to cause financial harm to any person; or
- Fraud or coercion.

For a discussion of the provisions of ss. 16.56, 90.404, 772.102, 787.05, 787.07, 794.056, 796.035, 796.045, 895.02, 905.34, 934.07, and 938.085, F.S., amended or repealed by the bill, see the “Effect of Proposed Changes” section of this analysis.

III. Effect of Proposed Changes:

Section 1 amends s. 16.56, F.S., relating to the Office of Statewide Prosecution, to authorize that office to investigate and prosecute human trafficking violations and other violations under

ch. 787, F.S., if other requirements of the statute are also met (the offense must occur or have occurred in two or more judicial circuits as part of a related transaction, or be connected with an organized criminal conspiracy affecting two or more judicial circuits).

Section 2 repeals s. 787.05, F.S., which punishes unlawfully obtaining labor and services.

Section 3 amends s. 787.06, F.S., the human trafficking statute, as follows:

- Amends legislative findings to indicate that victims of human trafficking also include those persons trafficked domestically within the borders of the United States.
- Takes the current definition of “forced labor services” and deletes reference to the term and substitutes the term “coercion,” then modifies the definition to indicate that “coercion” also applies to:
 - Enticing or luring any person by fraud or deceit, or coercion (currently, the statute mentions fraud or coercion).
 - Providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03, F.S., to a person for the purpose of exploitation of that person.
- Defines the term “commercial sexual activity” as a violation of ch. 796, F.S., or an attempt to commit any such offense, and includes the production of pornography and sexually explicit performances.
- Modifies the definition of the term “human trafficking” to mean transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person. (The current definition only includes transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport.)
- Defines the term “labor” as work of economic or financial value.
- Modifies the definition of the term “maintain” to include making possible the continued performance of labor service. (The current definition only speaks to securing continued performance of labor services.)
- Defines the term “obtain” as, in relation to labor or services, to secure performance thereof.
- Defines the term “services” as an act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, and the removal of organs.
- Defines the term “sexually explicit performance” as an act or show, whether public or private, live, photographed, recorded, or videotaped, which is intended to arouse or satisfy the sexual desires or appeal to the prurient interest.
- Defines the term “unauthorized alien” as an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. s. 1324a(h)(3). This term must be interpreted consistently with that section and any applicable federal rules or regulations.
- Defines the term “venture” as any group of two or more individuals associated in fact, whether or not a legal entity.
- Revises the elements and penalties of the current human trafficking offense found at s. 787.06(3), F.S. Currently, this subsection provides that it is a second degree felony 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 to benefit financially by receiving anything of value from participation in a venture that has subjected a person to forced labor or services.

As revised, human trafficking consists of any of a number of specific acts of different felony degrees and offense severity level rankings. (See “Technical Deficiencies” section of this analysis regarding the bill’s approach to ranking offenses.) These trafficking offenses are described as follows:

- It is a first degree felony,¹ ranked in Level 8, for a person to knowingly, or with reckless disregard for the facts, engage in, or attempt to engage in, or benefit financially by receiving anything of value from participation in a venture that has subjected a person to, human trafficking for forced labor or services using coercion.
- It is a first degree felony, ranked in Level 9, for a person to knowingly, or with reckless disregard for the facts, engage in, or attempt to engage in, or benefit financially by receiving anything of value from participation in a venture that has subjected a person to, human trafficking for forced labor or services or commercial sexual activity using coercion of any individual who is an unauthorized alien.
- It is a first degree felony, ranked in Level 8, for a person to knowingly, or with reckless disregard for the facts, engage in, or attempt to engage in, or benefit financially by receiving anything of value from participation in a venture that has subjected a person to, human trafficking for forced labor or services or for commercial sexual activity using coercion by the transfer or transport of any individual from outside Florida to within the state.
- It is a first degree felony, ranked in Level 9 and punishable by imprisonment for a term of years not exceeding life,² for a person to knowingly, or with reckless disregard for the facts, engage in, or attempt to engage in, or benefit financially by receiving anything of value from participation in a venture that has subjected a person to, human trafficking in which any child younger than 18 years of age is involved. Additionally, in a prosecution for this violation in which the defendant had a reasonable opportunity to observe the person who was subject to human trafficking, the State need not prove that the defendant knew that the person had not attained the age of 18 years.
- It is a life felony,³ ranked in Level 10, for a person to knowingly, or with reckless disregard for the facts, engage in, or attempt to engage in, or benefit financially by receiving anything of value from participation in a venture that has subjected a person to, human trafficking in which a child younger than 15 years of age is involved. Additionally, in a prosecution for this violation in which the defendant had a reasonable opportunity to observe the person who was subject to human trafficking, the State need not prove that the defendant knew that the person had not attained the age of 15 years.
- Provides that for each instance of human trafficking of any individual under s. 787.06(3), F.S., a separate crime is committed and a separate punishment is authorized.
- Provides that it is a first degree felony, ranked in level 9, for a parent, legal guardian, or other person having custody or control of a minor to sell or otherwise transfer custody or control of the minor, or to offer to sell or otherwise transfer custody of the minor, with knowledge or in

¹ The maximum term of imprisonment for a second degree felony is generally 30 years in state prison, though the Legislature may provide by statute for a term of imprisonment not exceeding life imprisonment. Section 775.082., F.S.

² *Id.*

³ The maximum term of imprisonment for a life felony is generally life imprisonment. Section 775.082, F.S.

reckless disregard to the fact that, as a consequence of the sale or transfer, the minor will be subject to human trafficking.

- Provides that any real property or personal property that was used, was attempted to be used, or was intended to be used in violation of this section may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act.

Section 4 amends s. 787.07, F.S. This section punishes as a first degree misdemeanor⁴ the offense of human smuggling, which specifically involves a person transporting into this state an individual who the person knows, or should know, is illegally entering the United States from another country. The bill raises the degree of the offense of human smuggling from a first degree misdemeanor to a third degree felony,⁵ provides for repeat offender sanctions under s. 775.084, F.S., and provides a directive to rank the offense as a Level 4 offense.

Section 5 amends s. 796.035, F.S., which provides that it is a first degree felony 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 such minor, with knowledge that, as a consequence of the sale or transfer, the minor will engage in prostitution, perform naked for compensation, or otherwise participate in the trade of sex trafficking. The bill amends this offense to delete a reference to “sex trafficking” and the words “perform naked for compensation, or otherwise participate in the trade of sex trafficking.”

Section 6 repeals s. 796.045, F.S., which punishes sex trafficking.

Section 7 amends s. 905.34, F.S. The statute currently lists a number of offenses over which a statewide grand jury has subject matter jurisdiction and may be impaneled subject to other requirements of the statute (the offense must occur or have occurred in two or more judicial circuits as part of a related transaction, or be connected with an organized criminal conspiracy affecting two or more judicial circuits). The bill provides for subject matter jurisdiction over any violation of the provisions of ch. 787, F.S., as well as any offense related to a violation of the provisions of ch. 787, F.S.

Section 8 amends s. 934.07, F.S. This statute, in part, provides that the Governor, the Attorney General, the Statewide Prosecutor, or any state attorney may authorize an application to a judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral or electronic communications by the FDLE or any law enforcement agency having responsibility for the investigation of the offense as to which the application is made when such interception may provide or has provided evidence of the commission of a specific violation. The bill adds to the list of violations any violation of s. 787.06, F.S.

Section 9 amends s. 90.04, F.S., relating to admissibility of character evidence. This statute provides, in part, that in a criminal case in which the defendant is charged with a crime involving child molestation, evidence of the defendant’s commission of other crimes, wrongs, or acts of child molestation is admissible and may be considered for its bearing on any matter to which it is relevant. The statute defines the terms “child molestation” and “sexual offense” as conduct

⁴ The maximum term of imprisonment for a first degree misdemeanor is one year in jail. Section 775.082, F.S.

⁵ The maximum term of imprisonment for a third degree felony is 5 years in state prison. Section 775.082, F.S.

prohibited by any of a number of specified statutes or statutory provisions, including s. 796.045, F.S. The bill deletes reference to s. 796.045, F.S., a conforming change because of the repeal of s. 796.045, F.S., by Section 6 of the bill.

Section 10 amends s. 772.102, F.S., the definitions section for ch. 772, F.S., the Civil Remedies for Criminal Practices Act. The civil remedies available under this chapter only apply to “criminal activity,” as defined. “Criminal activity” is, in part, defined as committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any crime that is chargeable by indictment or information under any of a number of specified statutes or chapters. This definition is amended to delete reference to s. 796.045, F.S., which Section 6 of the bill repeals.

Section 11 amends s. 794.056, F.S., relating to the Rape Crises Program Trust Fund. This fund is created within the Department of Health to provide funds for rape crisis centers in this state. Trust fund moneys must be used exclusively for the purpose of providing services for victims of sexual assault. Funds credited to the trust fund consist of those funds collected as an additional court assessment in each case in which a defendant pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, an offense provided in any of number of specified statutes or statutory provisions. The statute is amended to delete reference to s. 796.045, F.S., which Section 6 of the bill repeals.

Section 12 amends s. 895.02, F.S., the definitions section of the Florida RICO (Racketeer Influenced and Corrupt Organization),⁶ which punishes “racketeering activity.” The term “racketeering activity” is, in part, defined as committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any crime that is chargeable by petition, indictment or information under any of a number of specified statutes, statutory provisions, or chapters. This definition is amended to delete reference to s. 796.045, F.S., which Section 6 of the bill repeals.

Section 13 amends s. 938.085, F.S., which provides, in part, that in addition to any sanction imposed when a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a violation of any of a number of specified statutes or statutory provisions, the court shall impose a surcharge of \$151. The statute is amended to delete reference to s. 796.045, F.S., which Section 6 of the bill repeals.

Section 14 provides that the act takes effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁶ Sections 895.01-895.06, F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill modifies the penalty of the current human trafficking offense and creates several new human trafficking felonies. All of these offenses are first degree felonies, first degree felonies punishable by imprisonment not exceeding life, or life felonies. The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill will have an indeterminate prison bed impact.

VI. Technical Deficiencies:

The bill ranks offenses by using directive language.⁷ This is not the way noncapital felonies are ranked. Many noncapital felonies are ranked by amending s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to specify the ranking. If not specifically ranked in the chart, noncapital felonies are ranked by “default” based on their felony degree as provided in s. 921.0023, F.S.

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.

⁷ Ranking by directive is used for reclassification provisions and groupings (like attempts or solicitations). The only instance staff is aware of in which a specific offense contains directive language on rankings is attempted felony murder but this language is surplusage because attempted felony murder offenses are specifically ranked in s. 921.0022, F.S. Further, ranking a felony offense by directive would conflict with s. 921.0023, F.S., which clearly states that until the Legislature specifically assigns an offense to a severity level in the offense severity ranking chart, the severity level is within the parameters designated in s. 921.0023, F.S. Those “parameters” consist of an assigned level specific to the degree of the felony.

B. Amendments:

None.

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