

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 99 Sexual Exploitation

SPONSOR(S): Health & Human Services Committee; Health & Human Services Access Subcommittee; Fresen; Nuñez and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 202

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	14 Y, 0 N	Cary	Bond
3) Health & Human Services Committee	17 Y, 0 N, As CS	Batchelor	Gormley

SUMMARY ANALYSIS

CS/CS/HB 99 creates the Florida Safe Harbor Act to protect and provide shelter for sexually exploited children. Specifically, the bill:

- Makes amendments to definitions relating to abuse and sexual exploitation of children in Chapter 39, F.S. which could have the effect of considering a child as dependent and sexually exploited when they are engaging in prostitution. The bill also retains law enforcement discretion to arrest and prosecute children for the crime of prostitution.
- Requires law enforcement to deliver children picked up and alleged to be dependent and sexually exploited to the Department of Children and Families for assessment and possible shelter.
- Provides that the Department of Children and Families may place a child alleged to have been sexually exploited in a safe house, if one is available.
- Creates new sections of law related to safe harbor placements which provides process and requirements for services in safe houses.
- Increases the civil penalty for specified violations of prostitution from \$500 to \$5,000 and directs that \$4500 of the civil penalty be paid to the Department of Children and Family Services to fund safe houses and short-term safe houses.

The cost associated with this bill is not expected to have a direct fiscal impact on state agencies. However, there could be a fiscal impact on Community Based Care lead agencies, under contract to DCF.

The bill provides an effective date of January 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Safe Harbor Act

In 2008, the state of New York signed the “Safe Harbor for Exploited Youth Act” into law. The act requires local districts to provide crisis intervention services for sexually exploited children and decriminalizes child prostitution, recognizing these children as victims, rather than as criminals. The law is designed to provide counseling, emergency services and long term housing solutions for these children.¹ After the passage of this legislation various programs have become available to young children who have been sexually exploited, including GEMS in New York² and the Paul and Lisa Program in Connecticut.³ Both of these programs have received recognition and grant funding through the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.⁴

Sexual Exploitation and Prostitution

Chapter 39, F.S., provides guidance for treating dependent children who are the subject of abuse, neglect or abandonment. 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.⁵ Children who are allowed, encouraged or forced to engage in prostitution may be considered dependent by the courts⁶ and delivered to DCF for shelter and services in or out of their caregiver’s home.⁷ The definition of abuse from sexual exploitation in Chapter 39, Florida Statutes, does not include children who willfully engage in prostitution.⁸

The prohibition against prostitution is without respect to the age of the person offering, committing, or engaging in prostitution.⁹ A first offense for prostitution is a second-degree misdemeanor, a second offense is a first-degree misdemeanor, and a third or subsequent offense is a third-degree felony.¹⁰ In addition to the criminal penalties, a civil penalty of \$500 shall be assessed against individuals that solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.¹¹

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.¹² 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.¹³

¹ Department of Children and Family Services, Staff Analysis, HB 99 (September 15, 2011).

² <http://www.gems-girls.org/> (last visited 1/19/2012).

³ <http://www.paulandlisa.org/index.htm> (last visited 1/19/2012).

⁴ http://www.ojjdp.gov/programs/csec_program.html (last visited on 1/19/2012).

⁵ Section 39.01(67)(g), F.S.

⁶ Section 39.01(15), F.S.

⁷ See generally s. 39.013, F.S., which gives the circuit court exclusive original jurisdiction over a child found to be dependent.

⁸ Section 39.01(67)(g), F.S.

⁹ Section 796.07, F.S.

¹⁰ Section 796.07(4), F.S.

¹¹ Section 769.07(6), F.S.

¹² Section 796.045, F.S.

¹³ *Id.*

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.¹⁴

Other young people are recruited into prostitution through forced abduction, pressure from adults, or through deceptive agreements between parents and traffickers.¹⁵ 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 or detentions in the U.S. in 2005, 95% involved third party exploiters, 31% were for what they labeled solo types of prostitution cases, and 12% involved sexual exploitation.¹⁶

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. The average age at which girls first become victims of prostitution is 12-14; for boys and transgender youth it is 11-13.¹⁷

Services Currently Available for Shelter

The Department of Children and Families (DCF) acknowledges that foster homes, group homes and shelters used in the child welfare system are lacking in services or trained staff to address victims of sexual exploitation. DCF notes that 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.¹⁸

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 DJJ.¹⁹ These shelters are primarily voluntary and a court may order the child to stay in a shelter for a period no longer than 120 days.²⁰ Even under this longer stay option, only 10 shelters are available statewide.²¹ The CINS program shelters are not available for children who have been adjudicated dependent.²²

¹⁴ *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 (last visited 1/19/12)

¹⁵ Department of Children and Family Services, Staff Analysis, HB 99 (September 15, 2011); 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 1/19/12).

¹⁶ Department of Children and Family Services, Staff Analysis, HB 99 (September 15, 2011); 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*.

¹⁷ Department of Children and Family Services, Staff Analysis, HB 99 (September 15, 2011); 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 (last visited 1/19/12).

¹⁸ Department of Children and Family Services, Staff Analysis, HB 99 (September 15, 2011).

¹⁹ *Id.*

²⁰ Section 984.226(4), F.S.

²¹ Department of Children and Family Services, Staff Analysis, HB 99 (September 15, 2011).

²² Section 984.226(5)(d), F.S.

Currently, DCF has identified 69 possible victims of sexual exploitation that are being served within the foster care system. Additionally, DCF has identified 55 children within the last year who have been arrested for prostitution and are currently being served through the Department of Juvenile Justice system.²³ The Florida Department of Law Enforcement (FDLE) reports that during 2009, 22 children were arrested under the age of 16 for prostitution pursuant to 796.07(2), F.S.²⁴

Effect of Proposed Changes

Purpose and Intent Language

The bill is titled the Florida Safe Harbor Act. The bill amends s. 39.001, F.S., to provide legislative intent language as it relates to children that are victims of sexual exploitation. The bill recognizes that sexual exploitation is a problem in the state of Florida and nationwide, identifying that many of these children have a history of abuse and neglect and are often a hard population to serve. The legislative intent states that traffickers maintain control of these children through manipulation and force. The intent language also establishes goals of the Legislature in treating these children.

Definitions

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 to include 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 specifically include sexually exploited children within dependency actions.
- “Sexual abuse of a child” is amended to include a child offering to engage in or engaging in prostitution, provided that the child is not under arrest or being prosecuted in a delinquency or criminal proceeding for an offense related to prostitution. This change will expand the type of minors who may be considered sexually exploited and dependent while retaining law enforcement discretion to arrest or prosecute the minor for prostitution offenses.

Transfer to a Short-term Safe House

The bill amends s. 39.401, F.S., by requiring law enforcement officers to deliver an alleged dependent and sexually exploited child to DCF. Further, the bill allows that DCF may deliver the child to a short term safe house, if one is available.

Placement of Sexually Exploited Children

The bill creates s. 39.524, F.S., to require that any dependent child 6 years of age or older who has been found to be a victim of sexual exploitation be assessed for placement in a safe house. This does not apply to children who have been removed from their caregiver’s home, are receiving medical screenings or other proceedings pursuant to s. 39.407, F.S. The bill includes the manner in which the assessment is conducted as well as a requirement that the results of assessments be included in the judicial reviews for dependent children. The bill specifies that if placement is determined to be appropriate a child may be placed in a safe house, if one is available. The bill requires facilities serving sexually exploited children to report to DCF its success in achieving permanency for those children.

The bill requires DCF to address, in consultation with local law enforcement, runaway and homeless youth program providers, local probation departments, lead agencies and subcontract providers, local guardians ad litem, public defenders, state attorney's offices, and child advocates and service providers, the child welfare service needs of sexually exploited children as a component of the circuits

²³ Department of Children and Family Services, Staff Analysis, HB 99 (September 15, 2011).

²⁴ Florida Department of Law Enforcement, Staff Analysis, HB 99 (December 2, 2011).

master plan. The bill also requires DCF to submit to the legislature data on the placement of children in safe houses and the unavailability of safe houses.

Safe Harbors for Sexually Exploited Children

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

- “child advocate” Each short-term safe house must employ a child advocate to accompany the child to court, meet with law enforcement and serve as a liaison between the safe house and the court. It is not clear from the bill how this advocate will coordinate with case management staff of community based care lead agencies and the guardian ad litem in their advocacy role with the court.
- “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) and is not eligible for federal benefits through the Trafficking Victims Protection Act.²⁵
- “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.

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.

Civil Penalty Related to Prostitution

The bill amends s. 796.07, F.S., to increase 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), F.S., by soliciting, inducing, enticing, or procuring another to commit prostitution, lewdness, or assignation. The bill increases the civil penalty to \$5,000 and directs that the first \$500 shall be paid to the circuit court administrator and that the remaining \$4,500 of the penalty be deposited to the Operations and Maintenance trust fund at DCF for the sole purpose of funding safe houses. The effect of this change creates a proposed funding source for services for sexually exploited children. According to information provided by the Clerk of Courts, the collections of the fines by counties are not always certain and collection amounts vary by year.²⁶

Eligibility for Victim Assistance Award

The Florida Crimes Compensation Act directs the Office of the Attorney General to administer the Crimes Compensation Trust Fund to provide financial assistance to victims of violent crimes and to provide information and referral services that can help victims cope with the effects of the crimes against them. The Crimes Compensation Trust Fund receives funding derived from court-ordered assessments from offenders, including a mandatory court cost, a surcharge on fines, restitution, and

²⁵ 22 USC, ss.7101

²⁶ E-mail from Randy Long at the Clerk of Courts, received 11/16/2011 (on file with committee staff).

subrogation, when appropriate.²⁷ The Victim Assistance program is overseen by the Attorney General's office and provides financial assistance for medical care, lost income, mental health services, funeral expenses and other out-of-pocket expenses directly related to the injury, to persons who are eligible.²⁸

The bill amends s. 960.065, F.S., to allow victims of sexual exploitation pursuant to a definition in s.39.01 (67)(g), F.S., to be eligible for compensation awards.

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 by the Department of Juvenile Justice..

B. SECTION DIRECTORY:

Section 1 provides a title of Florida Safe Harbor 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 creates s. 39.524, F.S., relating to safe-harbor placement.

Section 6 creates s. 409.1678, F.S., relating to safe harbor for children who are victims of sexual exploitation.

Section 7 amends s. 796.07, F.S., relating to prohibiting prostitution, etc.; evidence; penalties; definitions.

Section 8 amends s. 960.065, F.S., relating to eligibility for awards.

Section 9 amends s.985.115, F.S., relating to release or delivery from custody.

Section 10 provides an effective date of January 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

²⁷ Sections 938.03, 938.04, 775.0835, and 775.089, F.S.

²⁸ <http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument> (last visited 1/20/2012).

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments under child protection expenditures.

D. FISCAL COMMENTS:

Collection of the Civil Penalty

At line 443, the civil penalty related to solicitation of prostitution is increased by this bill from \$500 to \$5,000. The \$4,500 increase is to be provided to DCF for services to sexually exploited children. According to information provided by the Clerk of Courts, while data is inconsistent from circuit to circuit, the collections of the fines by counties are not always certain and collection amounts vary by year.²⁹

The current \$500 penalty is collected by the clerks and distributed to the local drug courts. Collection statistics and rates are not kept on a statewide basis, and there is no reliable statewide data on what percentage of the current fee is collected. Assuming the statewide average collection rate for county court criminal fines is 38.5%³⁰ and an estimated 1,244 offenders annually,³¹ yields potential revenue of \$2,155,230 annually. However, the current collection rate related to this offense appears to be significantly lower than the overall collection rate for misdemeanor offenders. For instance, Miami-Dade County collected a total of \$862 in FY 2010 and \$415 in FY 2011 from such offenders.

Child Protection Expenditures

The cost associated with this bill is not anticipated to have a direct fiscal impact on state agencies. However, it could have an indeterminate fiscal impact on community based care (CBC) lead agencies (under contract with DCF). CBC agencies are required to serve all dependent children referred to their agency under a fixed contract amount.

The use of safe house services described in the bill is at the discretion of DCF and CBC agencies. However, if they choose to use safe houses, the cost is estimated to be \$225.00 per day.³² DCF estimated the cost to serve an increase of 200 children through safe house type services at \$8.3 million annually.³³ DCF does anticipate an increase of children to the child welfare system that could be recognized as victims of sexual exploitation.³⁴

²⁹ E-mail from Randy Long at the Clerk of Courts, received 11/16/2011 (on file with committee staff).

³⁰ Florida Association of Court Clerks/Comptrollers, Collection Rate Analysis, November 2011.

³¹ Florida Department of Law Enforcement (FDLE) reports that in the last 10 years there were 12,441 charges under s. 796.07(2)(f), F.S., according to an e-mail from FDLE staff to Civil Justice Subcommittee staff (on file with committee staff).

³² Department of Children and Family Services, Amended Staff Analysis, HB 99 (February 3, 2012).

³³ *Id.*

³⁴ *Id.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides that the department may adopt rules to administer s. 409.1678, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 409.1678(1)(a), F.S. provides for a definition of "child advocate," requiring the advocate to accompany the child to all court appearances. It is not clear how this advocate will coordinate with case management staff of community based care lead agencies and the Guardian ad Litem, which already represent the child's interests in advocacy efforts.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGE

On December 7, 2011, the Health and Human Services Access Subcommittee adopted a strike all amendment to House Bill 99.

The strike all amendment makes the following changes to the bill:

- Amends the definition of abuse to clarify that it includes sexual abuse. The definition of a child who is dependent is amended to recognize sexual exploitation as one of the possible findings of the court. Further, the bill clarifies that sexual exploitation includes sex trafficking.
- Removes rebuttable presumption language that law enforcement must deliver a child to a safe house if one is available. The amendment keeps intact law enforcements current process for addressing these children.
- Requires that children who have been sexually exploited be placed in shelters and facilities that offer treatment for sexually exploited children.
- Requires the Department of Children and Families (DCF) to develop guidelines for serving sexually exploited children and to produce reports to the Legislature.
- The amendment adds the term "safe house" and "short term safe house" to s. 409.175, F.S., relating to licensure of facilities.

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

On February 16, 2012, the Health and Human Services Committee adopted a strike all amendment to CS/House Bill 99.

The strike all amendment makes the following changes to the bill:

- Makes amendments to definitions relating to abuse and sexual exploitation of children in Chapter 39, F.S. which could have the effect of considering a child as dependent and sexually exploited when they are engaging in prostitution. The bill also retains law enforcement discretion to arrest and prosecute children for the crime of prostitution.

- Provides descriptions and definitions of safe house and short-term safe house which are specialized residential and shelter options for sexually exploited children.
- Provides discretion to DCF to place a child who has been sexually exploited in a safe house after appropriate assessments and if a safe house is available.
- Provides for an increase of \$4,500 in the civil penalty for violations of .s.796.07(2)(f), related to prostitution and designation of these funds to support safe houses.

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