

1 A bill to be entitled
2 An act relating to human trafficking; creating the
3 "Florida Victim's Relief Act"; creating s. 90.50355,
4 F.S.; defining the terms "confidential communication,"
5 "human-trafficking counselor," "trained volunteer,"
6 and "victim"; providing that a victim of human
7 trafficking has a privilege to refuse to disclose, and
8 to prevent any other person from disclosing, a
9 confidential communication made by the victim to a
10 human-trafficking counselor or trained volunteer or
11 any record made in the course of advising, counseling,
12 or assisting the victim; providing that the
13 confidential communication or record may be disclosed
14 only with the prior written consent of the victim;
15 specifying by whom the privilege may be claimed;
16 amending s. 772.104, F.S.; authorizing a court to
17 award punitive damages to a person who proves by clear
18 and convincing evidence that he or she has been
19 subjected to sex trafficking or human trafficking;
20 amending s. 787.06, F.S.; providing that in each
21 instance in which a defendant pleads nolo contendere
22 to, or is convicted of, or adjudicated delinquent for,
23 the crime of human trafficking, the victim of that
24 crime is entitled to all benefits, rights, and
25 compensation granted pursuant to law; providing that a
26 defendant may assert an affirmative defense that the
27 person was acting under duress or coerced into
28 committing the offense of human trafficking for which

29 | he or she is being subject to prosecution; creating s.
 30 | 796.095, F.S.; authorizing a person convicted of
 31 | committing the offense of prostitution and other sex
 32 | crimes to file a motion to vacate the conviction if
 33 | the person's participation in the offense was the
 34 | result of the person having been a victim of human
 35 | trafficking or of a severe form of trafficking;
 36 | requiring certain specified conditions be met in order
 37 | to file the motion; requiring the court to hold a
 38 | hearing on a motion to vacate the conviction;
 39 | permitting the court to dismiss the motion to vacate
 40 | the conviction without a hearing if the court finds
 41 | that the motion fails to assert grounds on which
 42 | relief may be granted; providing that the person
 43 | filing a motion to vacate the conviction has the
 44 | burden of proof by a preponderance of the evidence;
 45 | providing that a minor is not required to show that
 46 | force, fraud, or coercion was used against him or her
 47 | at the time of the offense; providing an effective
 48 | date.

50 | Be It Enacted by the Legislature of the State of Florida:

52 | Section 1. This act may be cited as the "Florida Victim's
 53 | Relief Act."

54 | Section 2. Section 90.50355, Florida Statutes, is created
 55 | to read:

56 | 90.50355 Human-trafficking counselor-victim privilege.—

57 | (1) As used in this section, the term:
 58 | (a) "Confidential communication" means a communication
 59 | between a human-trafficking counselor or trained volunteer and a
 60 | victim. The communication is confidential if it is not intended
 61 | to be disclosed to a third person other than those persons who
 62 | are:

63 | 1. Present to further the interest of the victim in the
 64 | consultation, examination, or interview;

65 | 2. Necessary for the transmission of the communication;
 66 | and

67 | 3. Reasonably necessary to accomplish the purposes for
 68 | which the human-trafficking counselor or the trained volunteer
 69 | is consulted.

70 | (b) "Human-trafficking counselor" means:

71 | 1. A psychotherapist as that term is defined in s. 90.503;
 72 | or

73 | 2. A person who is employed and supervised by one of the
 74 | persons specified in s. 90.503, who renders services to a victim
 75 | of human trafficking, and who has received 40 hours of state-
 76 | accredited training in assisting a victim of human trafficking;
 77 | in civil and criminal law as it relates to human trafficking; in
 78 | the trauma issues associated with victims of human trafficking;
 79 | in peer counseling techniques; in the medical, legal, emotional,
 80 | and social service needs of victims of human trafficking; and in
 81 | the federal, state, and community resources available to meet
 82 | the needs of victims of human trafficking.

83 | (c) "Trained volunteer" means a person who has completed
 84 | 40 hours of state-accredited training in assisting a victim of

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85 human trafficking identical to that provided to a human-
86 trafficking counselor, who is supervised by members of the staff
87 of the psychotherapist or human-trafficking counselor, and who
88 is included on a list of volunteers which is maintained by the
89 human-trafficking counselors.

90 (d) "Victim" is a person who consults a human-trafficking
91 counselor or a trained volunteer for the purpose of securing
92 advice, counseling, or assistance concerning a mental, physical,
93 or emotional condition caused by human trafficking, alleged
94 human trafficking, or attempted human trafficking.

95 (3) A victim has a privilege to refuse to disclose, and to
96 prevent any other person from disclosing, a confidential
97 communication made by the victim to a human-trafficking
98 counselor or trained volunteer or of any record made in the
99 course of advising, counseling, or assisting the victim. The
100 confidential communication or record may be disclosed only with
101 the prior written consent of the victim. This privilege includes
102 any advice given by the human-trafficking counselor or trained
103 volunteer in the course of that relationship.

104 (4) The privilege may be claimed by:

105 (a) The victim or the victim's attorney on his or her
106 behalf.

107 (b) A guardian or conservator of the victim.

108 (c) The personal representative of a deceased victim.

109 (d) The human-trafficking counselor or trained volunteer,
110 but only on behalf of the victim. The authority of a human-
111 trafficking counselor or trained volunteer to claim the
112 privilege is presumed in the absence of evidence to the

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113 | contrary.

114 | Section 3. Section 772.104, Florida Statutes, is amended
115 | to read:

116 | 772.104 Civil cause of action.—

117 | (1) A ~~Any~~ person who proves by clear and convincing
118 | evidence that he or she has been subjected to a ~~injured by~~
119 | ~~reason of any violation of the provisions of s. 772.103~~ has
120 | ~~shall have~~ a cause of action for threefold the actual damages
121 | sustained and, in any such action, is entitled to minimum
122 | damages in the amount of \$200, and reasonable attorney
123 | ~~attorney's~~ fees and court costs in the trial and appellate
124 | courts.

125 | (2) As an alternative to recovery under subsection (1), a
126 | ~~any~~ person who proves by clear and convincing evidence that he
127 | or she has been injured by reason of a ~~any~~ violation of ~~the~~
128 | ~~provisions of s. 772.103~~ due to sex trafficking or human
129 | trafficking has ~~shall have~~ a cause of action for threefold the
130 | amount gained from the sex trafficking or human trafficking and
131 | in any such action is entitled to minimum damages in the amount
132 | of \$200 and reasonable attorney ~~attorney's~~ fees and court costs
133 | in the trial and appellate courts.

134 | (3) ~~In no event shall~~ Punitive damages may be awarded
135 | under this section. The defendant may ~~shall be entitled to~~
136 | recover reasonable attorney ~~attorney's~~ fees and court costs in
137 | the trial and appellate courts upon a finding that the claimant
138 | raised a claim which was without substantial fact or legal
139 | support. In awarding attorney ~~attorney's~~ fees and costs under
140 | this section, the court may ~~shall~~ not consider the ability of

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141 the opposing party to pay such fees and costs. ~~Nothing under~~
142 This section does not limit ~~shall be interpreted as limiting~~ any
143 right to recover attorney ~~attorney's~~ fees or costs provided
144 under other provisions of law.

145 Section 4. Subsections (8) and (9) are added to section
146 787.06, Florida Statutes, to read:

147 787.06 Human trafficking.—

148 (8) In each instance in which a defendant pleads nolo
149 contendere to, or is convicted of, or adjudicated delinquent
150 for, the crime of human trafficking under this section, the
151 human-trafficking victim is entitled to all benefits, rights,
152 and compensation granted pursuant to law.

153 (9) When a defendant who is being prosecuted for
154 trafficking in persons is also a victim of human trafficking, it
155 is an affirmative defense that the defendant was acting under
156 duress or coerced into committing the offenses for which he or
157 she is being subject to prosecution. A human-trafficking victim
158 who is also trafficking in persons is not criminally liable for
159 a commercial sex act or illegal sexually explicit performance
160 committed as a direct result of, or incident or related to,
161 being trafficked.

162 Section 5. Section 796.095, Florida Statutes, is created
163 to read:

164 796.095 Prostitution; motion to vacate conviction.—

165 (1) A person convicted of committing the offense of
166 offering, committing, or engaging in prostitution under s.
167 796.07(1), or convicted of a lesser offense when originally
168 charged with a violation of s. 796.07(1), may file a motion to

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169 vacate the conviction if the person's participation in the
170 offense was the result of the person having been a victim of
171 human trafficking, as defined in s. 787.06, s. 796.04, or s.
172 796.045, or if the person is a victim of a severe form of
173 trafficking as defined in 22 U.S.C. s. 7102(13).

174 (2) A motion filed under this section must:

175 (a) Be in writing;

176 (b) Be signed and sworn to by the petitioner;

177 (c) Be made within 6 years after the date that the person
178 ceases to be a victim, subject to reasonable concerns for the
179 safety of the defendant, family members of the defendant, or
180 other victims of the trafficking that may be jeopardized by the
181 bringing of a motion, or for other reasons consistent with the
182 purpose of this section;

183 (d) Describe all the grounds and evidence for vacation of
184 a conviction which are available to the petitioner and of which
185 the petitioner has or by the exercise of reasonable diligence
186 should have knowledge, and provide copies of any official
187 documents showing that the defendant is entitled to relief under
188 this section; and

189 (e) Be subject to the review and written approval of the
190 state attorney responsible for prosecuting the offense that is
191 the subject of the motion to vacate conviction.

192 (3) The court shall hold a hearing on a motion filed under
193 this section if the motion satisfies the requirements of
194 subsection (2). The court may dismiss a motion without a hearing
195 if the court finds that the motion fails to assert grounds on
196 which relief may be granted.

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197 (4) If the court grants a motion filed under this section,
198 the court shall vacate the conviction.

199 (5) A person making a motion to vacate pursuant to this
200 section has the burden of proof by a preponderance of the
201 evidence. A person making a motion regarding a conviction
202 related to an offense committed while he or she was a minor is
203 not required to show that force, fraud, or coercion was used
204 against him or her at the time of the offense.

205 Section 6. This act shall take effect October 1, 2013.