

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 Committee on Judiciary

BILL: CS/SB 768

INTRODUCER: Criminal Justice Committee and Senator Braynon

SUBJECT: Human Trafficking

DATE: April 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 768 revises laws on human trafficking. These changes:

- Provide that the definition of “sexual abuse of a child” used in dependency proceedings includes allowing, encouraging, or forcing a child to participate in human trafficking for commercial sexual activity;
- Allow a defendant who is charged with the crime of human trafficking of a minor to access court records relating to the victim to prepare a defense, but prohibits the defendant from disclosing the victim’s identity to persons not related to the preparation of the defense;
- Clarify that the offense of human trafficking includes human trafficking that does and does not involve a venture;
- Prohibit a public employee or officer having access to specified personal information regarding a victim of human trafficking for labor or services or human trafficking for commercial sexual activity from willfully and knowingly disclosing information to unauthorized persons or entities;
- Authorize compensation claims for victims of human trafficking; and
- Make victims of human trafficking eligible for victim relocation assistance.

II. Present Situation:

Human Trafficking

Section 787.06, F.S., punishes “human trafficking,” which the statute defines as “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining¹ another person for the purpose of exploitation of that person.”²

The statute punishes a variety of acts relating to human trafficking.³ Specifically, the statute provides that any person who knowingly, or in reckless disregard of the facts, engages in, or attempts to engage in, or benefits financially by receiving anything of value from participating in a venture⁴ involving human trafficking:

- Using coercion⁵ for labor⁶ or services⁷ commits a first degree felony (s. 787.06(3)(a), F.S.);⁸
- Using coercion for commercial sexual activity⁹ commits a first degree felony (s. 787.06(3)(b), F.S.);
- Using coercion for labor or services of any individual who is an unauthorized alien commits a first degree felony (s. 787.06(3)(c), F.S.);
- Using coercion for commercial sexual activity of an unauthorized alien commits a first degree felony (s. 787.06(3)(d), F.S.);
- Using coercion for labor or services by transferring or transporting a person into the state commits a felony of the first degree (s. 787.06(3)(e), F.S.);
- Using coercion for commercial sexual activity by transferring or transporting a person into the state commits a first degree felony (s. 787.06(3)(f), F.S.);

¹ “Obtain” means, in relation to labor or services, to secure performance thereof. Section 787.06(2)(g), F.S.

² Section 787.06(2)(d), F.S.

³ The statute was substantially amended by the Legislature in 2012. HB 7049 (2012-97, L.O.F.). Among other things the legislation consolidated in s. 787.06, F.S., sex trafficking offenses that were previously contained in other statutes.

⁴ “Venture” means any group of two or more individuals associated in fact, whether or not a legal entity.

Section 787.06(2)(k), F.S.

⁵ “Coercion” means: 1) using or threatening to use physical force against any person; 2) restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will; 3) using lending or other credit methods to establish a debt by any 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; 4) 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 any person; 5) causing or threatening to cause financial harm to any person; 6) enticing or luring any person by fraud or deceit; or 7) providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03, F.S., to any person for the purpose of exploitation of that person. Section 787.06(2)(a), F.S.

“Financial harm” includes extortionate extension of credit, loan sharking as defined in s. 687.071, F.S., or employment contracts that violate the statute of frauds as provided in s. 725.01, F.S. Section 787.06(2)(c), F.S.

⁶ “Labor” means work of economic or financial value. Section 787.06(2)(e), F.S.

⁷ “Services” means any 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, or the removal of organs. Section 787.06(2)(h), F.S.

⁸ Generally, a first degree felony is punishable by up to 30 years in state prison, a fine of up to \$10,000, or imprisonment and a fine. Sections 775.082 and 775.083, F.S.

⁹ “Commercial sexual activity” means any violation of ch. 796, F.S. (Prostitution), or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(b), F.S. “Sexually explicit performance” means an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest. Section 787.06(2)(i), F.S.

- For commercial sexual activity in which any child under the age of 18 is involved commits a first degree felony, punishable by imprisonment of up to life imprisonment (s. 787.06(3)(g), F.S.); or
- For commercial sexual activity in which any child under the age of 15 is involved commits a life felony (s. 787.06(3)(h), F.S.).

Additionally, a parent, legal guardian, or other person having custody or control of a minor commits a first degree felony if they sell or otherwise transfer custody or control of the minor, or offers to sell or otherwise transfer custody of the minor, with knowledge or in reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will be subject to human trafficking (s. 787.06(4), F.S.).

Definition of “Sexual Abuse of a Child”

Chapter 39, F.S., addresses proceedings relating to the protection of the welfare of children.¹⁰ The definition of “sexual abuse of a child” in s. 39.01(67), F.S., includes the sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, provided that the child is not under arrest or is not being prosecuted in a delinquency or criminal proceeding for a violation of any offense in ch. 796, F.S. (prostitution) based on such behavior; or allowing, encouraging, or forcing a child to:

- Solicit for or engage in prostitution;
- Engage in a sexual performance, as defined by ch. 827, F.S. (child abuse); or
- Participate in sex trafficking as provided in s. 796.035 (selling or buying of minors into prostitution).

Prior to legislation that passed in 2012,¹¹ s. 796.035, F.S., provided:

Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers 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, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

As a result of the 2012 legislation, the offense was modified and reference to the “trade of sex trafficking” was removed.¹² The statute now reads:

Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge or in reckless disregard of the fact that, as

¹⁰ Chapter 39, F.S., establishes a Florida child dependency process and provides the process and procedures for: reporting child abuse and neglect; protective investigations; taking children into custody and shelter hearings; petition, arraignment, and adjudication of dependency; disposition of the dependent child; post-disposition change of custody; case plans; permanency; judicial reviews; and termination of parental rights.

¹¹ Chapter 2012-97, L.O.F.

¹² Additionally, the 2012 legislation repealed s. 796.045, F.S., which punished sex trafficking. Sex trafficking is now addressed in s. 787.06, F.S.

a consequence of the sale or transfer, the minor will engage in prostitution commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Consequently, as a result of the 2012 legislative changes, the reference to “trade of sex trafficking in s. 796.035” is not in current law.

Victim Identity Information in Judicial Proceedings and Records

Section 92.56(1)(a), F.S., provides that the confidential and exempt status of criminal intelligence information or criminal investigative information made confidential and exempt pursuant to s. 119.071(2)(h), F.S., must be maintained in court records pursuant to s. 119.0714(1)(h), F.S.,¹³ and in court proceedings, including testimony from witnesses.

Section 119.071(2)(h), F.S., provides that the following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution:

- Any information, including the photograph, name, address, or other fact, which reveals the identity of a victim of child abuse as defined by ch. 827, F.S.¹⁴
- Any information which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution), ch. 800, F.S. (lewd acts), ch. 827, F.S. (child abuse), or ch. 847, F.S. (acts involving obscenity or materials harmful to a minor).
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under any of the previously referenced chapters, regardless of whether the photograph, videotape, or image identifies the victim.¹⁵

If a petition for access to confidential and exempt records is filed with the trial court having jurisdiction over the alleged offense, the court must maintain the confidential and exempt status of this information if the state or the victim demonstrates that:

- The identity of the victim is not already known in the community;
- The victim has not voluntarily called public attention to the offense;
- The identity of the victim has not otherwise become a reasonable subject of public concern;
- The disclosure of the victim’s identity would offend a reasonable person; and
- The disclosure of the victim’s identity would:

¹³ Section 119.0714(1), F.S., provides that nothing in ch. 119, F.S. (the public records chapter), shall be construed to exempt from s. 119.07(1), F.S. (inspection and copying), a public record that was made a part of a court file and that is not specifically closed by order of court, except for a record or information specified in that subsection. One of the exceptions is criminal intelligence information or criminal investigative information that is confidential and exempt as provided in s. 119.071(2)(h), F.S. Section 119.0714(1)(h), F.S.

¹⁴ Section 827.03(1)(b), F.S., defines “child abuse” as: 1) intentional infliction of physical or mental injury upon a child; 2) an intentional act that could reasonably be expected to result in physical or mental injury to a child; or 3) active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

¹⁵ Section 2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency: a) in the furtherance of its official duties and responsibilities; b) for print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered; and c) to another governmental agency in the furtherance of its official duties and responsibilities. Section 119.071(2)(h)2., F.S.

- Endanger the victim because the assailant has not been apprehended and is not otherwise known to the victim;
- Endanger the victim because of the likelihood of retaliation, harassment, or intimidation;
- Cause severe emotional or mental harm to the victim;
- Make the victim unwilling to testify as a witness; or
- Be inappropriate for other good cause shown.

A defendant charged with a crime described in ch. 794, F.S., or ch. 800, F.S., or with child abuse, aggravated child abuse, or sexual performance by a child as described in ch. 827, F.S., may apply to the trial court for an order of disclosure of information in court records held confidential and exempt pursuant to s. 119.0714(1)(h), F.S., or maintained as confidential and exempt pursuant to court order under s. 92.56, F.S.

The previously-described victim identification information may be released to the defendant or his or her attorney to prepare for defense. The confidential and exempt status of this information may not be construed to prevent disclosure of the victim's identity to the defendant; however, the defendant may not disclose the victim's identity to any person other than the defendant's attorney or any other person directly involved in the preparation of the defense. A willful and knowing disclosure of the identity of the victim to any other person by the defendant constitutes contempt.

The state may use a pseudonym instead of the victim's name to designate the victim of a crime described in ch. 794, F.S., or ch. 800, F.S., or of child abuse, aggravated child abuse, or sexual performance by a child as described in ch. 827, F.S., or any crime involving the production, possession, or promotion of child pornography as described in ch. 847, F.S., in all court records and records of court proceedings, both civil and criminal.

The protection of s. 92.56, F.S., may be waived by the victim of the alleged offense by filing with the court a written consent to the use or release of identifying information during court proceedings and in the records of court proceedings.

Section 92.56, F.S., does not prohibit publication or broadcast of the substance of trial testimony in a prosecution for an offense described in ch. 794, F.S., or ch. 800, F.S., or a crime of child abuse, aggravated child abuse, or sexual performance by a child, as described in ch. 827, F.S., but publication or broadcast may not include an identifying photograph, an identifiable voice, or the name or address of the victim, unless the victim has filed with the court written consent or the court has declared such records not confidential and exempt as provided for in s. 92.56 (1), F.S. A willful and knowing violation of s. 92.56, F.S., or a willful and knowing failure to obey any court order issued under the statute constitutes contempt.¹⁶

Victim Compensation and Relocation Assistance

The Florida Crimes Compensation Act¹⁷ authorizes the Florida Attorney General's Division of Victim Services to administer a compensation program to ensure financial assistance for victims

¹⁶ Section 92.56(6), F.S.

¹⁷ Sections 960.01-960.28, F.S.

of crime. Injured crime victims may be eligible for financial assistance for medical care, lost income, mental health services, funeral expenses and other out-of-pocket expenses directly related to the injury.¹⁸ Currently, s. 906.065(2), F.S., makes ineligible compensation claims filed by persons engaged in unlawful activity at the time of the crime.

Section 960.199, F.S., provides relocation assistance to victims of sexual battery. The Department of Legal Affairs (the Florida Attorney General's Office) administers the assistance program. Under this program, a victim of sexual battery¹⁹ who needs relocation assistance may receive a one-time payment not exceeding \$1,500 on any one claim and a lifetime maximum of \$3,000 if all of the following criteria are met:

- Proof that a sexual battery offense was committed.
- The sexual battery offense must be reported to the proper authorities.
- The victim's need for assistance as certified by a certified rape crisis center in this state.
- The center must certify that the victim is cooperating with law enforcement officials, if applicable, and document that the victim has developed a safety plan.
- 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 his or her continued safety.²⁰

III. Effect of Proposed Changes:

CS/SB 768 revises the law on human trafficking. These changes:

- Provide that the definition of "sexual abuse of a child" used in dependency proceedings includes allowing, encouraging, or forcing a child to participate in human trafficking for commercial sexual activity;
- Provide protections for disclosure of court record information that identifies a victim of human trafficking of a minor for labor or services or human trafficking for commercial sexual activity;
- Clarify the offense of human trafficking includes human trafficking that does and does not involve a venture;
- Prohibit a public employee or officer having access to specified personal information regarding a victim of human trafficking of a minor for labor or services or human trafficking for commercial sexual activity from willfully and knowingly disclosing that information to an unauthorized person or entity;
- Authorize a compensation claim filed by a person engaged in prostitution as a result of being a victim of human trafficking for commercial sexual activity; and
- Provide that a victim of human trafficking of a minor for labor or services or human trafficking for commercial sexual activity is eligible for victim relocation assistance.

Section 1. Amends the definition of "sexual abuse of a child" in s. 39.01, F.S., to delete reference to "the trade of sex trafficking as provide in s. 796.035" (an obsolete reference) and

¹⁸ Attorney General, *Crime Victims' Services*.

<http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument> (last visited on April 3, 2014).

¹⁹ See s. 794.011, F.S. (sexual battery).

²⁰ Section 960.199(2), F.S.

include within that definition the sexual exploitation of a child that involves allowing, encouraging, or forcing a child to participate in human trafficking:

- For commercial sexual activity in which a child younger than 18 years of age is involved; and
- For commercial sexual activity in which a child younger than 15 years of age is involved.

Section 2. Amends s. 92.56, F.S. (judicial proceedings and court records involving sexual offenses), to specify in the title of the statute that the statute also includes human trafficking offenses and to add the following offenses to s. 92.56(2), (3), and (5), F.S., that involve human trafficking:

- Using coercion for labor or services, if the victim is younger than 18 years of age;
- Using coercion for commercial sexual activity;
- Using coercion for commercial sexual activity of an individual who is an unauthorized alien;
- Using coercion for commercial sexual activity who does so by the transfer or transport of an individual from outside this state to within the state;
- For commercial sexual activity in which a child younger than 18 years of age is involved; and
- For commercial sexual activity in which a child younger than 15 years of age is involved.

The effects of this change are:

- A defendant charged with any of these specified human trafficking offenses may apply to the trial court for an order of disclosure of information in court records held confidential and exempt pursuant to s. 119.0714(1)(h), F.S., or maintained as confidential and exempt pursuant to court order, in order for the defendant to prepare for his or her defense.
- The state may use a pseudonym instead of the victim's name to designate the victim of any of these specified human trafficking offenses in all court records and records of court proceedings, both civil and criminal.
- Section 92.56, F.S., does not prohibit the publication or broadcast of the substance of trial testimony in a prosecution for any of these human trafficking offenses.

Section 3. Currently, s. 787.06(3), F.S., provides that it is unlawful for any person to knowingly, or in reckless disregard of 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 involving any of a number of specified acts. The bill clarifies its application to human trafficking whether or not the activity involve a venture.

Section 4. Section 906.065(2), F.S., provides that compensation claims filed by persons engaged in an unlawful activity at the time of the crime upon which the claim is based are not eligible for an award under the Florida Crimes Compensation Act. The bill amends this subsection to provide an exception for a victim engaged in prostitution as a result of being a victim of human trafficking:

- Using coercion for commercial sexual activity;
- Using coercion for commercial sexual activity of an individual who is an unauthorized alien;
- Using coercion for commercial sexual activity who does so by the transfer or transport of an individual from outside this state to within the state;
- For commercial sexual activity in which a child younger than 18 years of age is involved; or

- For commercial sexual activity in which a child younger than 15 years of age is involved.

Section 5. Section 960.199, F.S., provides relocation assistance to victims of sexual battery. The bill extends relocation assistance to victims of human trafficking.

The bill also amends criteria in the statute for granting relocation assistance to sexual battery victims and victims of human trafficking involving commercial sexual activity. The statute currently provides that the victim's need for assistance must be certified by a certified rape center in this state. The bill allows this certification to be made by the state attorney or statewide prosecutor having jurisdiction over the offense.

Florida law provides that the center's certification must assert that the victim is cooperating with law enforcement officials, if applicable, and document that the victim has developed a safety plan. The bill provides that, with the approval of the state attorney or statewide prosecutor, the center must make this assertion.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final official estimate of the prison bed impact, if any, of legislation, has yet reviewed the bill. However, the Legislature's Office of Economic and Demographic Research preliminarily estimates that the bill will not have a prison bed impact.

In its analysis of the impact of the bill on the court system, the Office of the State Courts Administrator (OSCA) states that the anticipated judicial or court workload impact is not significant. However, the OSCA provides the following additional comments regarding the bill's impact:

The existing definition of "sexual abuse" of a child includes allowing, encouraging, or forcing a child to engage in prostitution. The extent to which judicial workload would be affected by this bill depends upon the number of human trafficking offenses that would be filed as a result of this bill, which is unknown. The more human trafficking cases that are filed as a result of this bill, the more judicial workload may be increased due to prosecution of the cases, decisions on applications for disclosure of information by defendants in the cases, and because the increased opportunity for a public employee or officer to unlawfully disclose information about victims may result in additional prosecutions of such violations.²¹

The Department of Legal Affairs has not provided an analysis of the bill's impact. The bill may result in more victims receiving victim compensation funds from the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.01, 92.56, 787.06, 960.065, and 960.199.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 24, 2014:

Removes a provision from the bill that provides a penalty for a public employee/officer who willfully and knowingly discloses certain information regarding a human trafficking victim to a person not authorized to have access to that information.

- B. **Amendments:**

None.

²¹ 2014 Judicial Impact Statement (SB 768) (March 5, 2014), Office of the State Courts Administrator (on file with the Senate Committee on Criminal Justice).

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