

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 Appropriations

BILL: PCS/SB 1106 (694962)

INTRODUCER: Appropriations Committee (Recommended by the Appropriations Subcommittee on Criminal and Civil Justice); and Senator Flores

SUBJECT: Human Trafficking

DATE: April 15, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	<u>Clodfelter</u>	<u>Kynoch</u>	<u>AP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1106 amends section 796.07, Florida Statutes, relating to prostitution, by enhancing the criminal penalties for a person who solicits, induces, entices, or procures another to commit prostitution, lewdness, or assignation as follows:

- A first violation becomes a first degree misdemeanor (currently a second degree misdemeanor);
- A second violation becomes a third degree felony (currently a first degree misdemeanor); and
- A third or subsequent violation becomes a second degree felony (currently a third degree felony).

The bill requires such person to perform 100 hours of community service and to pay for and attend an educational program about the negative effects of prostitution and human trafficking, if one exists. The bill allows a judge to order the offender's vehicle, if one is used in the offense, to be impounded or immobilized for up to 60 days (unless certain exceptions apply).

A person convicted of a second or subsequent solicitation violation under the bill is required to serve a minimum of 10 days in county jail.

The bill also amends section 943.0583, Florida Statutes, relating to human trafficking victim expunction, to require the court to allow an advocate from the state attorney's office, law enforcement agency, safe house or safe foster home, or residential facility offering services to

adult human trafficking victims to be present with the victim/petitioner during any expunction court proceeding.

The Criminal Justice Impact Conference (CJIC) has determined that this bill will result in an insignificant increase in the need for state prison beds.

The bill provides an effective date of October 1, 2015.

II. Present Situation:

Prostitution

The human trafficking statute recognizes that many victims of human trafficking are forced to work in prostitution or the sexual entertainment industry.¹ Prostitution is criminalized in ch. 796, F.S. It is defined as the “giving or receiving of the body for sexual activity² for hire but excludes sexual activity between spouses.”³ Prohibited activities include, among others, soliciting, inducing, enticing, or procuring another to commit prostitution, lewdness⁴, or assignation^{5, 6}.

A first solicitation violation is punishable as a second degree misdemeanor⁷, a second violation as a first degree misdemeanor⁸, and a third or subsequent violation as a third degree felony⁹ under s. 796.07(4), F.S. A civil penalty of \$5,000 is also required to be assessed, unless the offender is acquitted or the case is dismissed.¹⁰

Finally, the statute requires that a person who is charged with a third violation be offered admission to a pretrial intervention program or substance abuse treatment program under s. 948.08, F.S.¹¹

Human Trafficking Victim Expunction

Section 943.0583, F.S., authorizes a victim of human trafficking to petition the court for an expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed while he or she was a victim of human trafficking.¹² The statute defines “victim of human trafficking” to mean a person subjected to coercion for the purpose of being

¹ Section 787.06(1)(b), F.S.

² Section 796.07(1)(d), F.S., defines “sexual activity” to mean 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, it does not include acts done for bona fide medical purposes.

³ Section 796.07(1)(a), F.S.

⁴ Section 796.07(1)(b), F.S., defines “lewdness” as any indecent or obscene act.

⁵ Section 796.07(1)(c), F.S., defines “assignation” as making an appointment or engagement for prostitution or lewdness.

⁶ Section 796.07(2)(f), F.S.

⁷ Incarceration not exceeding 60 days in county jail and/or a fine not exceeding \$500. Sections 775.082 and 775.083, F.S.

⁸ Incarceration not exceeding one year in county jail and/or a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

⁹ Imprisonment not exceeding 5 years and/or a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

¹⁰ Section 796.07(6), F.S.

¹¹ Section 796.07(5), F.S.

¹² “Human trafficking” is defined under s. 787.06(2)(d), F.S., as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.

used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.¹³

The court of original jurisdiction over the crime sought to be expunged is the court designated in the statute to hear the victim's petition.¹⁴ A petition must be initiated by the petitioner with due diligence after the victim has ceased being a victim of human trafficking or has sought human trafficking services.¹⁵ A petition to expunge must be accompanied by the following:

- A sworn statement attesting that the petitioner is eligible for an expunction to the best of his or her knowledge and does not have other petitions to expunge or seal pending before any court; and
- Official documentation of the petitioner's status as a human trafficking victim, if any exists.¹⁶

The petitioner or the petitioner's attorney is allowed under the statute to appear at the hearing telephonically, via video conference, or by other electronic means.¹⁷

If the court grants relief to the petitioner, the clerk of the court must certify copies of the expunction order to the appropriate state attorney or statewide prosecutor and the arresting agency. The Florida Department of Law Enforcement (department) is responsible for forwarding the order to expunge to the Federal Bureau of Investigation.¹⁸

Any criminal justice agency having custody of such record, except the department, must physically destroy the record. Human trafficking victims receiving a record expunction under this statute are lawfully able to deny or fail to acknowledge the covered arrests, except if they are applying for employment with a criminal justice agency or are a defendant in a criminal prosecution.¹⁹

III. Effect of Proposed Changes:

Prostitution

The bill amends s. 796.07, F.S., by enhancing the criminal penalties for a person who solicits, induces, entices, or procures another to commit prostitution, lewdness, or assignation as follows:

- A first violation becomes a first degree misdemeanor (currently a second degree misdemeanor);
- A second violation becomes a third degree felony (currently a first degree misdemeanor); and
- A third or subsequent violation becomes a second degree felony²⁰ (currently a third degree felony).

¹³ Section 943.0583(1)(c), F.S.

¹⁴ Section 943.0583(2), F.S.

¹⁵ Section 943.0583(4), F.S.

¹⁶ Section 943.0583(6), F.S.

¹⁷ Section 943.0583(7) (b), F.S.

¹⁸ Section 943.0583(7)(c), F.S.

¹⁹ Section 943.0583(8), F.S.

²⁰ Punishable by imprisonment not exceeding 15 years and/or a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

The bill requires such person to perform 100 hours of community service and to pay for and attend an educational program about the negative effects of prostitution and human trafficking, if one exists.

It also requires a person convicted of a second or subsequent solicitation violation to serve a minimum of 10 days in county jail.

The bill prohibits a person who is charged with a third or subsequent solicitation violation from attending a pretrial intervention program or substance abuse program.

The bill also allows a judge to order the offender's vehicle, if one is used in the offense, to be impounded or immobilized for up to 60 days. The order of impoundment or immobilization must include the names and telephone numbers of all immobilization agencies meeting the conditions of s. 316.193(13).²¹ Within seven business days after the order is issued, the clerk of the court must send notice by certified mail, return receipt requested, to the registered owner of the vehicle, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the vehicle.

The owner of the vehicle may request the court to dismiss the order, and the court must dismiss the order, at no cost to the owner, if it finds any of the following to be true:

- The owner's family has no other private or public means of transportation;
- The vehicle was stolen at the time of the offense;
- The owner bought the vehicle after the offense was committed and it was not done to circumvent the order and allow the defendant continued access; or
- The vehicle is owned by the defendant but is operated solely by employees of the defendant or employees of a business owned by the defendant.

If the court denies the request to dismiss the order, the petitioner may request an evidentiary hearing. At that hearing, if the court finds that any of the above circumstances exist, it must dismiss the order, at no cost to the owner.

Human Trafficking Victim Expunction

The bill amends s. 943.0583, F.S., to require the court to allow an advocate from the state attorney's office, law enforcement agency, safe house or safe foster home, or residential facility offering services to adult human trafficking victims to be present with the petitioner during any expunction court proceeding. This requirement only applies if the petitioner requests it and an advocate is available.

The bill also provides that any court in the circuit in which the petitioner was arrested may order expunction of a human trafficking victim's criminal record if the court has jurisdiction over the class of offense or offenses sought to be expunged. Currently, expunction can only be ordered by "the court of original jurisdiction over the crime sought to be expunged."

²¹ These conditions include, among others: having verifiable experience in immobilizing vehicles, maintaining accurate records, and employing persons that meet specified requirements.

Finally, the bill amends ss. 456.074, 480.041, and 480.043, F.S., to make a technical and conforming cross-reference change.

The effective date of the bill is October 1, 2015.

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:

Persons convicted of soliciting prostitution may be subject to potentially higher fines under PCS/SB 1106. Their vehicles may also be subject to immobilization, which could have a positive fiscal impact on immobilization companies.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) met on February 27, 2015, and determined that this bill will result in an increase in the need for state prison beds. However, the impact will be insignificant because of the low volume of offenses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 796.07 and 943.0583.

The bill makes technical and conforming cross-reference changes to the following sections of the Florida Statutes: 456.074, 480.041, and 480.043.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on April 8, 2015:

The committee substitute amends the bill to provide that any court in the circuit in which a human trafficking victim was arrested may order expungement of the victim's criminal record if the court has jurisdiction over the class of offense or offenses sought to be expunged.

- B. **Amendments:**

None.