

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 4033 Prostitution

**SPONSOR(S):** Spano

**TIED BILLS:**           **IDEN./SIM. BILLS:**

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) Children, Families & Seniors Subcommittee	11 Y, 0 N	Tuszynski	Brazzell
2) Criminal Justice Subcommittee			
3) Health & Human Services Committee			

**SUMMARY ANALYSIS**

The Florida Safe Harbor Act of 2012 allows sexually exploited children to be treated as dependent children rather than delinquent children and provides for specialized services and supports to protect child victims of sexual exploitation. The Legislature also provides in s. 787.06(1)(d), F.S., the intent to penalize perpetrators of human trafficking and protect victims, and finds in s. 706.001, F.S., that minors are unable to consent to prostitution.

Section 39.01(69)(g), F.S., includes as “sexual exploitation of a child” a child engaging in prostitution, as long as the child is not under arrest or being prosecuted for an offense related to prostitution. The Department of Juvenile Justice reports that 39 minors were charged with prostitution in FY 2014-15.

HB 4033 deletes all references to prostitution in “sexual exploitation of a child” under s. 39.01(69)(g), F.S. This conforms to Legislative intent in s. 706.001, F.S., and also allows children arrested or prosecuted for prostitution to be considered victims of sexual exploitation for purposes of the child welfare system.

The bill has no fiscal impact on state or local government.

The bill has an effective date of July 1, 2016

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### Human Trafficking

Florida law defines human trafficking as “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.”<sup>1</sup> Human trafficking is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor.<sup>2</sup> Trafficking often subjects victims to force, fraud, and coercion.<sup>3</sup>

There are no definitive statistics on the extent of human trafficking. The U.S. Department of State estimates that as many as 27 million victims are being trafficked worldwide at any given time. They also estimate that there were approximately 44,000 victims being trafficked in the United States in 2013.<sup>4</sup>

##### Commercial Sex Trafficking of Minors

Human trafficking involving commercial sex is also known as commercial sexual exploitation or commercial sex trafficking. The United States Trafficking Victims Protection Act of 2000 defines sex trafficking as the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.<sup>5</sup>

In cases of commercial sex trafficking of children (CSEC), pimps often operate as the primary domestic sex traffickers and target particularly vulnerable youth, such as runaway and homeless youth.<sup>6</sup> Pimps may engage in a “grooming” process where a child is showered with gifts, treats, and compliments in order to earn his or her trust.<sup>7</sup> Often the children have low self-esteem and may come from broken families or have past childhood trauma which may include sexual or physical abuse.<sup>8</sup> This makes the children easier targets because they are emotionally vulnerable, looking for someone to love and care for them. After the pimp earns the child’s trust the pimp may engage in physical, sexual, and/or emotional abuse of the child.<sup>9</sup> The effect is to psychologically and emotionally break the child so that he or she becomes completely dependent on the pimp.<sup>10</sup> Psychologists and clinicians call this phenomenon “traumatic bonding.”<sup>11</sup> This occurs where a person has dysfunctional attachment that occurs in the presence of danger, shame, or exploitation. These situations often include seduction, deception or betrayal, and some form of danger or risk is always present.<sup>12</sup> While this is a common way that commercial sexual exploitation occurs, some children are commercially sexually exploited by family members or organized networks.<sup>13</sup>

##### Previous Human Trafficking Legislation

###### *Safe Harbor Act*

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<sup>1</sup> S. 787.06(2)(d), F.S.

<sup>2</sup> S. 787.06(1)(a), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> *Trafficking in Persons Report 2014*, U.S. Department of State, available at: <http://www.state.gov/j/tip/rls/tiprpt/2014/> (last accessed 11/20/15).

<sup>5</sup> Trafficking Victims Protection Act of 2000, 22 USC 7101.

<sup>6</sup> Sex Trafficking of Children in the United States, The Polaris Project, accessible at: <http://www.polarisproject.org/sex-trafficking> (last accessed 11/20/15).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

The Florida Safe Harbor Act of 2012 allows sexually exploited children to be treated as dependent children<sup>14</sup> rather than delinquent children.<sup>15</sup> The act amended Florida law to make child prostitution abuse of a child, rather than a criminal act by the child, and allows children who are victims of sexual exploitation to be adjudicated dependent.

However, statute does not allow children who are under arrest or being prosecuted in a delinquency or criminal proceed for a violation in chapter 796 (offenses related to prostitution) to be considered victims of sexual abuse of a child.<sup>16</sup>

Law enforcement officers are required to deliver a minor taken into custody to the Department of Children and Families (DCF) when there is probable cause to believe he or she has been sexually exploited.<sup>17</sup> Safe houses and short-term safe houses were created by the Safe Harbor Act, and DCF is authorized to place sexually exploited children in these facilities.<sup>18</sup>

#### *HB 7141 (2014)*<sup>19</sup>

This legislation created the Statewide Council on Human Trafficking to enhance the development and coordination of law enforcement and social services responses.

The legislation required the Department of Children and Families (DCF) to develop or adopt one or more initial screening and assessment instruments to identify, determine the needs of, plan services for, and determine the appropriate placement for sexually exploited children.

The legislation also established statutory standards, including specialized treatment for residential treatment of sexually exploited children, authorized safe foster homes, and identified circumstances in which a child can be placed in a safe house. The legislation also created a certification program for safe houses and safe foster homes at DCF and required certification in order for these facilities to accept state funds specifically allocated to care for sexually exploited children. The legislation required residential treatment centers and hospitals providing residential mental health treatment to provide specialized treatment for sexually exploited children in the custody of DCF placed in these facilities pursuant to existing law.

#### *HB 989 (2014)*<sup>20</sup>

This legislation amended a variety of criminal statutes related to human trafficking and that provide protections to victims of sexual offenses. For instance, it added offering a child for engagement in human trafficking to the definition of “sexual abuse of a child” used in dependency proceedings.

#### Current Law as it Relates to Child Welfare and Human Trafficking

Section 39.01(69)(g), F.S., defines “sexual abuse of a child” to include “sexual exploitation of a child.” Sexual exploitation of a child 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. Sexual exploitation also includes allowing, encouraging, or forcing a child to solicit for or engage in prostitution, engage in a sexual performance, as defined by ch. 827, or participate in the trade of human trafficking as provided in s. 787.06(3)(g).

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<sup>14</sup> A child who is found to be dependent is a child who pursuant to s. 39.01(69)(g), F.S., is found by the court to have been sexually exploited and to have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care.

<sup>15</sup> S. 39.001(4)(b)(2), F.S.

<sup>16</sup> S. 39.01(69)(g), F.S.

<sup>17</sup> S. 39.401(2)(b), F.S.

<sup>18</sup> S. 409.1678, F.S.

<sup>19</sup> Chapter 2014-161, Laws of Fla.

<sup>20</sup> Chapter 2014-160, Laws of Fla.

Section 787.06, F.S., states that any person who knowingly, or in reckless disregard of the facts, attempts or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for “commercial sexual activity” in which any child under the age of 18 is involved, commits a life felony.

Section 787.06(2)(b), F.S., defines “commercial sexual activity” as any violation of chapter 796 (offenses related to prostitution) or an attempt to commit any such offense, including sexually explicit performances and the production of pornography.

Section 39.001(5)(b), F.S., provides for the treatment of sexually exploited children as dependent rather than delinquent. Additionally, the Legislature finds in s. 796.001, F.S., that minors cannot consent to prostitution, and in s. 787.06(1)(d), F.S., that its intent is to penalize perpetrators of human trafficking and protect victims. However, the Department of Juvenile Justice (DJJ) reports that 39 minors were charged with prostitution in FY 2014-15.<sup>21</sup> Of those 39: 14 were dismissed, 10 ended in probation, and 4 were committed to DJJ facilities; the remainder of these cases are either still open or in some other non-final or non-judicial disposition at this time.<sup>22</sup>

### Efforts by Department of Children and Families and the Department of Juvenile Justice

Pursuant to the provisions of HB 7141, a human trafficking screening instrument has been developed by a joint workgroup between the DCF and DJJ. This tool is designed to assist child welfare professionals and DJJ staff with identifying youth who have been victims of CSEC and determining the appropriate level of services needed.

Furthermore, both DCF and DJJ are represented on the Statewide Council on Human Trafficking<sup>23</sup> to support victims of human trafficking and develop programs, recommendations, and policy while coordinating and enhancing law enforcement and social services responses.

DCF has also taken steps to implement other provisions of the law such as participating in local human trafficking task forces and initiating rulemaking for the certification of safe homes. DCF has also updated its Maltreatment Index<sup>24</sup> to better define human trafficking and guide intake employees accepting calls at the central abuse registry through the subtleties of potential human trafficking.

### **Effect of Proposed Changes**

HB 4033 deletes all references to prostitution in the definition of “sexual abuse of a child” under s. 39.01(69)(g), F.S., regarding the child welfare system. This includes removing the provision that bars children charged with or being prosecuted for prostitution from being found dependent for purposes of the child welfare system.

After these deletions, children allowed, encouraged, or forced to engage in prostitution may still be found dependent due to sexual exploitation of a child, even though language specifying that solicitation or engagement in prostitution is an element of sexual exploitation of a child is removed. This is because the renumbered s. 39.01(69)(g)2., F.S., would still consider participation in the trade of human trafficking as sexual exploitation, and commercial sexual activity such as prostitution involving a child under age 18 is considered human trafficking.<sup>25</sup>

Furthermore, children under arrest or prosecution for a prostitution offense will be able to be found dependent based on the revised definition of “sexual abuse of a child”.

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<sup>21</sup> Email from Meredith Brock Stanfield, Director of Legislative Affairs, Department of Juvenile Justice, FW: prostitution stats (Nov. 12, 2015).

<sup>22</sup> *Id.*

<sup>23</sup> Florida Office of the Attorney General, Statewide Council on Human Trafficking, *available at* <http://myfloridalegal.com/pages.nsf/Main/8AEA5858B1253D0D85257D34005AFA72> (last accessed 11/20/15).

<sup>24</sup> Department of Children and Families, Policies and Procedures, CFOP 175-28, *available at* <http://www.dcf.state.fl.us/admin/publications/policies.asp?> (last accessed 11/23/15).

<sup>25</sup> S. 787.06(3)(g), F.S.

**B. SECTION DIRECTORY:**

**Section 1:** Amending s. 39.01(69)(g), F.S., relating to sexual abuse of a child.

**Section 2:** Provides an effective date of July 1, 2016.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES