

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 Criminal Justice

BILL: CS/SB 972

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Human Trafficking

DATE: April 17, 2017

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Jones | Hrdlicka | CJ | Fav/CS |
| 2. | | | JU | |
| 3. | | | AP | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 972 creates a civil cause of action for victims of human trafficking.

The bill also:

- Allows the Statewide Council on Human Trafficking (council) within the Department of Legal Affairs, with the consent of the victim, to bring a civil cause of action against the trafficker or facilitator of human trafficking;
- Specifies the standard of proof for this civil action is by the preponderance of the evidence;
- Specifies that the victim, or the council on behalf of the victim, who prevails in any such action is entitled to recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs;
- Requires the court impose civil penalties;
- Specifies that there is no statute of limitations for the civil action; and
- Requires the council to issue an annual report about the trust fund and to administer the Trust Fund for Victims of Human Trafficking and Prevention, created in CS/SB 970.

The bill provides an appropriation for the 2017-2018 Fiscal Year of \$153,000 in recurring funds and \$29,000 in nonrecurring funds from the Crimes Compensation Trust Fund to the Department of Legal Affairs, and three full-time equivalent positions are authorized, for the purpose of implementing the bill.

The bill is effective October 1, 2017.

II. Present Situation:

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, men, and women, who are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. There is an estimated 20.9 million adults and children in the world who are in some sort of forced labor or sexual exploitation. Of that number, an estimated 26 percent of them are children, and in 2010, it was estimated that as many as 300,000 children in the United States were at risk for exploitation each year.¹

Section 787.06, F.S., is Florida's human trafficking statute and defines "human trafficking" as the "transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person." The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking by using labor or services or through commercial sexual activity.²

Civil Cause of Action

Victims of human trafficking have a civil cause of action against a person who:

- With criminal intent, has:
 - Received any proceeds derived, directly or indirectly, from a pattern of criminal activity; or
 - Through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- Through a pattern of criminal activity or through the collection of an unlawful debt, has acquired or maintained, directly or indirectly, any interest in or control of any enterprise or real property.
- Was employed by or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity or the collection of an unlawful debt.
- Has conspired or endeavored to violate any of the actions listed above.³

The civil cause of action allows for threefold the actual damages sustained. The victim is entitled to minimum damages of \$200 and reasonable attorney's fees and court costs. Section 772.104(3), F.S., prohibits punitive damages from being awarded. The standard of proof for the civil cause of action is clear and convincing evidence.⁴

¹ U.S. Department of Justice, Office of Justice Programs, *OJP Fact Sheet, Fast Facts*, (December 2011) available at http://ojp.gov/newsroom/factsheets/ojpbs_humantrafficking.html (last visited March 26, 2017). Polaris, *Human Trafficking: The Facts*, 2016, available at <https://polarisproject.org/facts> (last visited March 26, 2017).

² See ss. 787.06(3) and (4), F.S.

³ Section 772.103, F.S.

⁴ Section 772.104, F.S.

The statute of limitations for the civil cause of action is 5 years after the conduct constituting a violation of one of the above stated provisions. The statute of limitations is suspended during prosecution for the criminal activity or criminal conduct, which is the basis for the civil action and for two years after its conclusion.⁵

Statewide Council on Human Trafficking

The Attorney General is the head of the Department of Legal Affairs.⁶ The Department of Legal Affairs (DLA) is responsible for providing all legal services required by any executive department unless otherwise provided by law. Additionally, the DLA administers certain trust funds and related programs that support crime victim services, criminal investigations,⁷ and crime prevention.⁸

The Statewide Council on Human Trafficking resides within the DLA “for the purpose of enhancing the development and coordination of state and local law enforcement and social services responses to fight commercial sexual exploitation as a form of human trafficking and to support victims.”⁹

III. Effect of Proposed Changes:

The bill creates an additional civil cause of action for victims of human trafficking to bring against the trafficker or facilitator of human trafficking who victimized them and allows the victims to recover damages. (Section 3, creating s. 787.063, F.S.). The Legislature finds that, to achieve the state’s goals relating to human trafficking set forth in s. 787.06(1)(d), F.S., it is necessary to provide a civil cause of action for the recovery of compensatory and punitive damages.

The bill defines the following terms (Section 2, creating s. 787.062, F.S.):

- “Council” means the Statewide Council on Human Trafficking within the Department of Legal Affairs, as created in s. 16.617, F.S.
- “Facilitator” means a person who knowingly, or in willful blindness, assists or provides goods or services to a trafficker, which assist or enable the trafficker to carry out human trafficking.
- “Human trafficking” has the same meaning as provided in s. 787.06(2), F.S.
- “Trafficker” means any person who knowingly engages in human trafficking, attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking.
- “Trust fund” refers to the Trust Fund for Victims of Human Trafficking and Prevention created in s. 787.0611, F.S.
- “Venture” means any group of two or more individuals associated in fact, whether or not a legal entity.

⁵ Section 772.17, F.S.

⁶ Section 16.015, F.S.

⁷ Sections 16.555 and 16.556, F.S.

⁸ Section 16.54, F.S.

⁹ Section 16.617, F.S.

- “Victim of human trafficking” means a person subjected to coercion, as defined in s. 787.06, F.S., for the purpose of being 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.
- “Willful blindness” occurs when a person’s suspicions are aroused about a particular fact and, while he or she realizes its probability, he or she deliberately refrains from obtaining confirmation of or acting on the fact because he or she wants to remain in ignorance, such that knowledge of the fact avoided can reasonably and fairly be imputed to the person who avoided confirming it.

The bill allows a victim to bring a civil action against the trafficker or facilitator of human trafficking who victimized the victim. The bill also allows the council, with the consent of the victim to bring a civil cause of action against the trafficker or facilitator of human trafficking who victimizes a person in Florida. An action may be brought in any court of competent jurisdiction and the standard of proof is preponderance of the evidence. The court has specific authority to consolidate civil actions for the same trafficker or facilitator for the purpose of case resolution and aggregate jurisdiction.

The victim, or the council on behalf of the victim, who prevails in any such action is entitled to recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs. The bill requires the noneconomic damages be calculated as in a tort action.

The bill specifies that the measure of economic damages for services or labor coerced from the victim of human trafficking must be the greater of the fair market value of the labor¹⁰ or services¹¹ provided or the amount realized by the trafficker. The economic damages must be calculated as a daily amount of the compensation payable to a person under s. 961.06(1)(a), F.S., for every day that the human trafficking was ongoing.¹² The bill specifies that the economic damages also include:

- Past and future medical and mental health expenses;
- Repatriation expenses, when a victim elects repatriation; and
- All other reasonable costs and expenses incurred by the victim in the past or estimated to be incurred by the victim in the future as a result of the human trafficking.

The bill specifies that if the council prevails on behalf of the victim, the trust fund must hold the moneys awarded for distribution to the victim, or his or her parent, legal guardian, or estate. If the victim’s parent or legal guardian knowingly or through willful blindness, participated in the human trafficking, he or she is not entitled to any distribution or benefit from the trust fund. The trust fund must keep the funds if there is no person or estate to receive the funds. The bill allows these funds to be used for the purposes of the trust fund.

¹⁰ Section 787.06(2)(e), F.S., defines “labor” to mean work of economic or financial value.

¹¹ Section 787.06(2)(h), F.S., defines “services” to mean 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.

¹² Section 961.06(1)(a), F.S., provides that monetary compensation (for wrongful incarceration) is calculated at a rate of \$50,000 for each year and can be prorated as necessary to account for a portion of a year.

These remedies are in addition to and cumulative with other legal and administrative remedies available to victims of human trafficking. The bill specifies that a victim may not recover under both the civil action created by the bill and the civil action provided in s. 772.104(2), F.S.

If a victim or the council, on behalf of the victim, prevails in an action, the court must award a civil penalty against the defendant of \$100,000. This penalty is in addition to, and not in lieu of, any other damage award. The civil penalty cannot be disclosed to the jury. The proceeds from the civil penalty must be deposited into the trust fund.

The court must also impose a civil penalty against the defendant in favor of the law enforcement agencies for \$50,000, if one or more law enforcement agencies rescued the victim or located the property upon which the abuse or exploitation occurred. The bill specifies that the award of the penalty to the law enforcement agencies is to fund future efforts to combat human trafficking. The court must equitably distribute the civil penalty among the law enforcement agencies.

The bill specifies that there is no statute of limitations for these civil actions.

The bill requires the council to issue an annual report no later than October 1 of each year to the President of the Senate and the Speaker of the House of Representatives detailing for the prior fiscal year all of the following (Section 4, creating s. 787.064, F.S.):

- The status of the trust fund;
- Any actions and outcomes under s. 787.063, F.S.; and
- Any information that demonstrates the council's fulfillment of the purposes of the trust fund during the prior fiscal year.

The bill also amends s. 16.617, F.S., (Section 5), to require the council to perform the functions and duties as the bill requires and administer the Trust Fund for Victims of Human Trafficking and Prevention.¹³

The bill provides an appropriation for the 2017-2018 Fiscal Year of \$153,000 in recurring funds and \$29,000 in nonrecurring funds from the Crimes Compensation Trust Fund to the Department of Legal Affairs, and three full-time equivalent positions are authorized, for the purpose of implementing the bill.

The bill is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹³ See CS/SB 970 (2017).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The impact on the courts is unknown at this time.

The bill provides an appropriation for the 2017-2018 Fiscal Year of \$153,000 in recurring funds and \$29,000 in nonrecurring funds from the Crimes Compensation Trust Fund to the Department of Legal Affairs, and three full-time equivalent positions are authorized, for the purpose of implementing the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

CS/SB 970 creates the Trust Fund for Victims of Human Trafficking and Prevention that is referred to in this bill.

CS/SB 1788 creates a public records exemption and is linked to the passage of this bill.

The statute of limitations provided for the civil cause of action in s. 772.104, F.S., is five years with some provided exceptions.¹⁴ The bill provides that there is no statute of limitations for this new civil cause of action.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 787.061, 787.062, 787.063, and 787.064.

This bill amends section 16.617 of the Florida Statutes.

¹⁴ Section 772.17, F.S.

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 April 17, 2017:

The committee substitute:

- Defines new terms;
- Specifies the types of damages a victim is entitled to and how the damages must be figured;
- Removes the proposed civil forfeiture cause of action;
- Requires the council to issue an annual report about the trust fund;
- Amends s. 16.617, F.S., to include the administration of the Trust Fund for Victims of Human Trafficking and Prevention;
- Adds an appropriation to implement the bill;
- Changes the effective date from July 1, 2017, to October 1, 2017; and
- Makes technical and stylistic changes.

- B. **Amendments:**

None.