

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/CS/SB 972

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senator Bracy

SUBJECT: Human Trafficking

DATE: April 21, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	<b>Fav/CS</b>
2.	Jones	Cibula	JU	<b>Fav/CS</b>
3.			AP	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

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

The specific provisions of the bill:

- Allow 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;
- Specify the standard of proof for this civil action is by the preponderance of the evidence;
- Specify 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;
- Require the court impose civil penalties;
- Specifies that there is no statute of limitations for the civil action;
- Require 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;
- Require the Attorney General to recommend one or more educational programs to train employees of public lodging establishments in the identification and reporting of suspected human trafficking;
- Provide the owner or operator of a public lodging establishment may not be held vicariously liable for facilitating human trafficking if certain employees complete educational programs within a specified time;

- Authorize the issuance of subpoenas in certain investigations involving children;
- Provide a nondisclosure requirement for these subpoenas in certain situations;
- Provide penalties for violation of the subpoenas or nondisclosure requirements;
- Provide immunity from civil liability for persons disclosing information requested in the subpoena; and
- Provide for judicial review and extension of the nondisclosure requirement.

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.<sup>1</sup>

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.<sup>2</sup>

### 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.

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

<sup>2</sup> See ss. 787.06(3) and (4), F.S.

- 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.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup>

### **Statewide Council on Human Trafficking**

The Attorney General is the head of the Department of Legal Affairs.<sup>6</sup> 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,<sup>7</sup> and crime prevention.<sup>8</sup>

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."<sup>9</sup>

### **Subpoenas**

The Sixth Amendment to the United States Constitution guarantees the defendant in a criminal case the right to have compulsory process for obtaining witnesses in his or her favor. That process is the issuing of subpoenas. Specifically, a subpoena is an order directed to a person which requires his or her attendance at a particular time and place to testify as a witness. A subpoena may also require the witness to bring documents or other tangible evidence which may be introduced as evidence in a case.<sup>10</sup>

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<sup>3</sup> Section 772.103, F.S.

<sup>4</sup> Section 772.104, F.S.

<sup>5</sup> Section 772.17, F.S.

<sup>6</sup> Section 16.015, F.S.

<sup>7</sup> Sections 16.555 and 16.556, F.S.

<sup>8</sup> Section 16.54, F.S.

<sup>9</sup> Section 16.617, F.S.

<sup>10</sup> THE LAW DICTIONARY.; *What is Subpoena?* <http://thelawdictionary.org/subpoena/> (last visited April 21, 2017).

Subpoenas can also be issued in a criminal investigation<sup>11</sup> or in a criminal prosecution during discovery<sup>12</sup> or for trial<sup>13</sup> by the state attorney, the defendant, his or her counsel. Generally, a subpoena must state the name of the court and the title of action and the time and the place at which the witness is commanded to give testimony or produce evidence.<sup>14</sup> Once a witness is subpoenaed by either party, he or she must remain available for attendance until the case is resolved or until he or she is excused by the court hearing the case.<sup>15</sup> A witness's failure to do so could result in being held in contempt of court.<sup>16</sup>

### *Nondisclosure*

A subpoena may prohibit the recipient of the subpoena from disclosing the existence or contents of the subpoena. For example, Florida statute authorizes an agency that is investigating<sup>17</sup> a violation of Florida's Racketeer Influenced and Corrupt Organizations (RICO) Act<sup>18</sup> to issue a civil investigative subpoena for testimony or documents.<sup>19</sup> This subpoena is confidential for 120 days, meaning the recipient of the subpoena may not disclose its contents or existence to any person or entity other than his or her attorney during that period.<sup>20</sup> The 120-day period may be extended by a circuit court upon showing of good cause by the investigative agency.<sup>21</sup> For good cause to exist, there must be a showing:

- Of sufficient factual grounds to reasonably indicate a violation of ss. 895.01 – 895.06, F.S.;
- That the documents or testimony requested appear reasonably calculated to lead to the discovery of admissible evidence; and
- Of facts that reasonably indicate that, disclosure of the subpoena would hamper or impede the investigation, or would result in a flight from prosecution.<sup>22</sup>

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<sup>11</sup> Florida law authorizes certain entities to use subpoenas for the purpose of conducting criminal investigations, including, but not limited to, s. 409.920, F.S., (authorizing the Attorney General to subpoena witnesses or materials, including medical records, during an investigation for Medicaid fraud); s. 415.107, F.S., (authorizing a criminal justice agency investigating a report related to abuse, neglect, or exploitation of a vulnerable adult to subpoena related records); and s. 414.411, F.S., (authorizing Department of Financial Services to subpoena witnesses and records related to a public assistance fraud investigation).

<sup>12</sup> Fla. R. Crim. P. 3.220 (h), allows any party to conduct a deposition by oral examination of any person authorized by the rule, generally including listed witnesses, co-defendants, or unlisted witnesses who have information relevant to the offense charged. The rule provides that the issuance of the subpoena for deposition is the same as provided for in the Florida Rules of Civil Procedure.

<sup>13</sup> Fla. R. Crim. P. 3.361(a), provides that subpoenas for testimony before the court and subpoenas for production of tangible evidence before the court may be issued by the clerk of the court or by any attorney of record in the case.

<sup>14</sup> *Id.*

<sup>15</sup> Section 914.03, F.S.

<sup>16</sup> *Id.*

<sup>17</sup> In order to issue a subpoena, the level of proof required is that there must be "something more than a fishing expedition, and something less than probable cause." *Check 'n Go of Florida, Inc. v. State* 790 So.2d 454,458 (Fla. 5th DCA 2001).

<sup>18</sup> The Racketeer Influenced and Corrupt Organizations Act was passed by Congress in 1970 as part of the Organized Crime Control Act of 1970. Florida passed its own RICO Act in 1977.

<sup>19</sup> Section 895.06, F.S.

<sup>20</sup> Section 895.06(2), F.S.

<sup>21</sup> *Id.*

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

Upon failure of the person or enterprise to comply with the subpoena, the investigative agency may apply to the circuit court to enforce the subpoena.<sup>23</sup>

Similarly, federal law authorizes the Federal Bureau of Investigation (FBI) to issue a National Security Letter (NSL), which is an administrative subpoena that allows the FBI to require records from wire or electronic communication service providers if the records are relevant to investigations related to terrorism or clandestine intelligence activities.<sup>24</sup> For such subpoenas, the FBI may require nondisclosure if the FBI certifies that disclosure may result in (i) a danger to the national security of the United States; (ii) interference with a criminal counterterrorism, or counterintelligence investigation; (iii) interference with diplomatic relations; or (iv) danger to the life or physical safety of any person.<sup>25</sup>

To avoid potential First Amendment concerns with such a restraint on speech, Congress passed the USA FREEDOM Act of 2015, which authorizes a recipient of a NSL/subpoena to notify the Government or file a petition for judicial review if the recipient wishes to have a court review a nondisclosure requirement in such subpoena.<sup>26</sup> Courts have upheld the FBI's authority to issue the subpoenas and the accompanying nondisclosure requirements because of the government's compelling interest in protecting national security.<sup>27</sup>

### III. Effect of Proposed Changes:

#### Human Trafficking Civil Action

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.

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<sup>23</sup> Section 895.06(4), F.S.

<sup>24</sup> 18 U.S.C. s. 2709(b)(1).

<sup>25</sup> *Id.* at s. 2709(c)(1)(B).

<sup>26</sup> 18 U.S.C. s. 3511(b)(1)(A).

<sup>27</sup> *Lynch v. Under Seal*, 165 F.Supp.3d 352 (D. Md. 2015).

- “Venture” means any group of two or more individuals associated in fact, whether or not a legal entity.
- “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 labor<sup>28</sup> or services<sup>29</sup> 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.<sup>30</sup> 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

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<sup>28</sup> Section 787.06(2)(e), F.S., defines “labor” to mean work of economic or financial value.

<sup>29</sup> 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.

<sup>30</sup> 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.

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.

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 Attorney General to consult with state and national hotel and lodging associations and recommend one or more educational programs designed to train employees of public lodging establishments in the identification and reporting of suspected human trafficking. The Attorney General must make this recommendation no later than January 31, 2018, and periodically update this recommendation.

If a public lodging establishment requires employees that the establishment expects to routinely interact with guests to complete one of the recommended educational programs within 30 days of hiring or by July 1, 2018, whichever occurs later, the owner or operator may not be held vicariously liable.

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.<sup>31</sup>

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

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<sup>31</sup> See CS/SB 970 (2017).

of Legal Affairs, and three full-time equivalent positions are authorized, for the purpose of implementing the bill.

### **Investigative Subpoenas**

The bill creates s. 794.11, F.S., which allows criminal justice agencies to issue subpoenas for specified investigations involving children. (Section 5, creating s. 794.11, F.S.).

The bill defines the following terms for this section of bill:

- “Child” means a person younger than 18 years of age.
- “Child sexual offender” means a person required to register as a sexual predator under s. 775.21, F.S., or as a sexual offender under s. 943.0435, F.S., if at least one of the offenses that qualified the person for such registration requirement involved a victim who was a child at the time of the offense.
- “Criminal justice agency” means a law enforcement agency, court, or prosecutor in Florida.
- “Sexual exploitation or abuse of a child” means a criminal offense based on any conduct described in s. 39.01(70), F.S.

The bill specifies that a criminal justice agency may issue a subpoena in any investigation for:

- An offense involving the sexual exploitation or abuse of a child;
- A sexual offense allegedly committed by a child sexual offender who has not registered as required under ss. 775.21 or 943.0435, F.S.; or
- An offense under ch. 847, F.S., involving a child victim which is not otherwise included in the above two bullets.

A subpoena may require the production of any record, object, or other information relevant to the investigation. The subpoena can also seek the testimony by the custodian of the record, object, or other information concerning the production and authenticity of the information. The subpoena must describe any record, object, or other information required to be produced and specify a reasonable return date by which the information sought must be made available.

The subpoena must also include notice of the nondisclosure requirement, the availability of judicial review.

The bill provides that the service of these subpoenas may be served as provided in ch. 48, F.S.<sup>32</sup>

### ***Nondisclosure Requirement***

The bill allows a criminal justice agency to prohibit a recipient of the subpoena from disclosing the existence or contents of the subpoena for 180 days. A subpoena that may not be disclosed must include written certification that disclosure of the subpoena may result in one of the following:

- Endangering a person’s life or physical safety;
- Encouraging a person’s flight from prosecution;
- Destruction of or tampering with evidence;

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<sup>32</sup> Chapter 48, F.S., specifies how summons, subpoenas, and other process in civil actions are served.



- Intimidation of potential witnesses; or
- Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

The bill provides the recipient of the subpoena subject to the nondisclosure requirement is able to disclose information about the subpoena to the following individuals:

- A person who is necessary to comply with the subpoena;
- An attorney in order to obtain legal advice or assistance regarding the subpoena; and
- Any other person authorized by the issuing criminal justice agency.

An individual to whom a disclosure is made to must be provided with a copy of the subpoena and are subject to the nondisclosure requirement. The criminal justice agency that issued the subpoena may request the identity of the individual whom the disclosure was made.

If a person refuses to comply with the subpoena, the criminal justice agency may request that the circuit court issue an order requiring compliance. If issued, a violation of such order is punishable by contempt of court. Further, a subpoena recipient, or a person to whom information is lawfully disclosed, who knowingly violates:

- A subpoena's nondisclosure requirement commits a noncriminal violation punishable by the imposition of a fine up to \$500. The bill specifies that each person to whom a prohibited disclosure is made constitutes a separate violation subject to a separate fine.
- A nondisclosure requirement ordered by the court may be punished by the court as contempt of court.

A subpoena containing a nondisclosure requirement must provide notice of the above-described penalties.

The bill allows the subpoena recipient to challenge the requirements of the subpoena at any time before the return date by petitioning the circuit court of the county in which he or she lives. The bill also allows the subpoena recipient, or a person to whom information about the subpoena is disclosed, to challenge a nondisclosure requirement by filing a petition for judicial review in the circuit court or notifying the criminal justice agency that issued the subpoena.

Within 30 days after the criminal justice agency receives a notification challenging the nondisclosure requirement the criminal justice agency must apply for an order prohibiting the disclosure of the existence or contents of the subpoena. An application for a nondisclosure order or extension thereof or a response to a filed petition filed must include a certification from the criminal justice agency that issued the subpoena indicating that the disclosure of such information may result in one of the circumstances stated above.

A circuit court shall issue a nondisclosure order or extension thereof if it determines that there is reason to believe that disclosure of such information may result in one or more of the circumstances. Upon this showing, a circuit court may issue an ex parte order extending a nondisclosure order imposed for an additional 180 days. There is no limit on the number of nondisclosure extensions that may be granted.

A circuit court must close any hearing to the extent necessary to prevent the unauthorized disclosure of a request for records, objects, or other information. Petitions, filings, records, orders, certifications, and subpoenas must also be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of any information under this section. However, an open hearing can occur in a contempt proceeding.

The bill specifies that the nondisclosure requirement must remain in effect during the pendency of these proceedings. The bill also requires the circuit court to rule on such petition or application as expeditiously as possible.

### ***Other***

Witnesses subpoenaed to testify are reimbursed for fees and mileage at the same rate at which witnesses in Florida courts are reimbursed.<sup>33</sup> A subpoena issued under the bill must not require the production of anything that is protected from production under the standards applicable to a subpoena duces tecum issued by a Florida court.<sup>34</sup>

The bill allows criminal justice agencies to require the production of documents as soon as possible, but the recipient of the subpoena must be given at least 24 hours after he or she is served to comply. The criminal justice agency must return any original documents or objects upon request, within a reasonable time, if prosecution does not occur.

The bill provides immunity from civil liability for persons disclosing information requested in the subpoena. This allows persons with information needed by the criminal justice agency to disclose it without fear that the person being investigated may sue them for disclosing the information.

The bill is effective October 1, 2017.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

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<sup>33</sup> Section 92.142, F.S. establishes the amount that witnesses in a court in Florida will be reimbursed for their time. Consideration is given to the length of testimony, the distance traveled, and the reason for testifying.

<sup>34</sup> A subpoena may request evidence that is relevant and admissible or is reasonably calculated to lead to admissible evidence. *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 94 (Fla. 1995). Certain documents, such as materials prepared for trial or work products, are not discoverable under the Florida Rules of Civil Procedure. Fla. R. Civ. P. 1.280.

**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:**

The statute of limitations provided for the civil cause of action in s. 772.104, F.S., is five years with some provided exceptions.<sup>35</sup> The bill provides that there is no statute of limitations for this new civil cause of action. The Legislature may wish to consider whether policy reasons would support the application of statutes of limitations to the civil liability provisions of the bill. The Florida Supreme Court in *Kipnis v. Bayerische Hypo-Und Vereinsbank*, 202 So. 3d 859, 866 (Fla. 2016), recently explained the policy reasons for statutes of limitations as follows:

Clearly, the purpose of the statute of limitations includes ‘protect[ing] defendants from unfair surprise and stale claims.’ *Raymond James Fin. Servs., Inc. v. Phillips*, 126 So. 3d 186, 192 (Fla. 2013) (quoting *Fla. Dep’t of Health & Rehab. Servs. v. S.A.P.*, 835 So. 2d 1091, 1096 (Fla. 2002)). We have explained that statutes of limitations

afford parties needed protection against the necessity of defending claims which, because of their antiquity, would place the defendant at a grave disadvantage. In such cases how resolutely unfair it would be to award one who has willfully or carelessly slept on his legal rights an opportunity to enforce an unfresh claim against a party who is left to shield himself from liability with nothing more than tattered or faded memories, misplaced or discarded records, and missing or deceased witnesses. Indeed, in such circumstances, the quest for truth might elude even the wisest court.

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<sup>35</sup> Section 772.17, F.S.

*Major League Baseball v. Morsani*, 790 So. 2d 1071, 1075 (Fla. 2001) (quoting *Nardone v. Reynolds*, 333 So. 2d 25, 36 (Fla. 1976)).

The bill also provides for judicial review of the nondisclosure requirement. To the extent that the nondisclosure requirement raises potential First Amendment concerns, a criminal justice agency may have to provide a compelling state interest for a nondisclosure requirement.

If a person violates a subpoena's nondisclosure requirement he or she may be punished by a fine. If a person fails to comply with the nondisclosure ordered by the court, he or she may be punished by the court as contempt of court. These penalties would only be enforceable to the extent of the court's jurisdiction.

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.

#### **VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 787.061, 787.062, 787.063, 787.064, and 794.11.

This bill amends section 16.617 of the Florida Statutes.

#### **IX. Additional Information:**

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

##### **CS/CS by Judiciary on April 19, 2017:**

The committee substitute:

- Requires the Attorney General to recommend one or more educational programs to train employees of public lodging establishments in the identification and reporting of suspected human trafficking;
- Provides the owner or operator of a public lodging establishment may not be held vicariously liable if certain employees complete such educational programs within a specified time;
- Authorizes the issuance of subpoenas in certain investigations involving children;
- Provides a nondisclosure requirement for these subpoenas in certain situations;
- Provides penalties for violation of the subpoenas or a nondisclosure requirement;
- Provides immunity from civil liability for persons disclosing information requested in the subpoena; and
- Provides for judicial review and the extension of the nondisclosure requirement in an investigative subpoena.

**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.