

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 167 Victims of Human Trafficking  
**SPONSOR(S):** Spano & others  
**TIED BILLS:** HB 169 **IDEN./SIM. BILLS:** SB 338, SB 1044

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	15 Y, 0 N	MacNamara	Bond
2) Justice Appropriations Subcommittee	12 Y, 0 N	Welty	Gusky
3) Judiciary Committee			

### SUMMARY ANALYSIS

Human trafficking is the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploiting that person.

Florida has enacted several laws to address human trafficking. Currently, Florida has laws that create criminal penalties for traffickers; provide a limited civil cause of action for victims of human trafficking who were injured as a part of a pattern, enterprise, or conspiracy of human trafficking; allow civil forfeiture to local law enforcement agencies of property used by a human trafficker; and direct the Statewide Council on Human Trafficking (council) to assist in combating human trafficking.

The bill creates a new civil cause of action for a victim of human trafficking that may be brought against a trafficker or a "facilitator" of human trafficking. The bill defines a facilitator as a person who knowingly, or in willful blindness, assists or provides goods or services to a trafficker that assist or enable the trafficker to carry out human trafficking. There is no statute of limitations for actions brought under the new civil cause of action.

If a victim of human trafficking is successful in their claim against a trafficker or facilitator of human trafficking, he or she is entitled to recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, and reasonable investigative costs and expenses. In addition to the damages provided to the victim, the bill requires the court to impose a \$100,000 civil penalty to be deposited into the Trust Fund for Victims of Human Trafficking and Prevention and a \$50,000 civil penalty provided to the law enforcement agency or agencies responsible for rescuing the victim or locating the property where the trafficking occurred.

The bill also provides an affirmative defense for an owner or operator of a public lodging establishment when an action is brought against them based on a claim of vicarious liability. The owner or operator must prove by a preponderance of the evidence that it:

- Required certain employees, within 30 days of hiring, to complete a training program on the identification and reporting of suspected human trafficking;
- Had in place a protocol or code of conduct to detect and report suspected human trafficking; and
- Took reasonable steps, before the first incident giving rise to an action, to ensure that any employees allegedly involved in human trafficking activities complied with the recommendations and practices covered in any training, protocols, or policies.

A tied bill (HB 169) creates the Trust Fund for Victims of Human Trafficking and Prevention, which will be funded in part from recoveries in these civil actions.

The bill has an indeterminate fiscal impact. The number of civil actions that may be brought against traffickers or facilitators is unknown and therefore, the amount of civil penalties and punitive damage awards that may be imposed and collected are also unknown.

The bill provides an effective date of July 1, 2018.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0167c.JUA

**DATE:** 12/7/2017

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Human Trafficking

Human trafficking is a form of modern-day slavery. Human trafficking is the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person.<sup>1</sup>

Victims of human trafficking are young children, teenagers, men, and women, who are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.<sup>2</sup> The International Labor Organization, the United Nations agency charged with addressing labor standards, employment, and social protection issues, estimates that as many as 27 million adults and children are in forced labor, bonded labor, and commercial sexual servitude at any given time.<sup>3</sup> The federal government has estimated that the number of persons trafficked into the United States each year ranges from 14,500 to 17,500.<sup>4</sup>

It is also estimated that as many as 300,000 American youth are currently at risk of becoming victims of commercial sexual exploitation.<sup>5</sup> The majority of American victims of commercial sexual exploitation tend to be runaway youth living on the streets. They generally come from homes where they have been abused or from families that have abandoned them.<sup>6</sup> These children often become involved in prostitution as a way to support themselves financially.<sup>7</sup> The average age at which girls first become victims of prostitution is 12 to 14 years old; for boys and transgender youth it is 11 to 13 years old.<sup>8</sup>

Currently, a person who knowingly, or in reckless disregard of the facts, engages in human trafficking may be subject to the criminal penalties as provided for under s. 787.06(3), F.S. This section also applies to persons who attempt to engage in human trafficking, recklessly disregard facts of human trafficking, or benefit financially from participating in a human trafficking venture.

According to the Department of Law Enforcement, there have been 278 human trafficking related arrest events since 2014.<sup>9</sup> The Department of Corrections reports since FY 2013-14, eighteen individuals

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

<sup>2</sup> U.S. Department of Health and Human Services, Administration for Children and Families, *About Human Trafficking*, <http://www.acf.hhs.gov/trafficking/about/index.html#>

<sup>3</sup> See U.S. Department of State, *The 2013 Trafficking in Persons (TIP) Report*, June 2013, <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>

<sup>4</sup> Sonide Simon, *Human Trafficking and Florida Law Enforcement*, Florida Criminal Justice Executive Institute, pg. 2, March 2008, <http://www.fdle.state.fl.us/Content/getdoc/e77c75b7-e66b-40cd-ad6e-c7f21953b67a/Human-Trafficking.aspx>

<sup>5</sup> *OJP Fact Sheet*, Office of Justice Programs, U.S. Department of Justice, December 2011, [http://ojp.gov/newsroom/factsheets/ojpfs\\_humantrafficking.html](http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html)

<sup>6</sup> Tamar R. Birckhead, *The "Youngest Profession": Consent, Autonomy, and Prostituted Children*, 88 WASH. U.L. REV. 1055, 1092, n193 (2011).

<sup>7</sup> Human trafficking in Florida proliferates through illegal industries such as prostitution. Chapter 796, F.S., defines prostitution as "the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses."

<sup>8</sup> See FN 5.

<sup>9</sup> Email from Ronald E. Draa, Jr., Director of External Affairs, Florida Department of Law Enforcement, March 31, 2017, (on file with Justice Appropriations Subcommittee).

have received a prison sentence and an additional three individuals have been placed on probation for charges relating to human trafficking.<sup>10</sup>

### Statewide Council on Human Trafficking

The state created the Statewide Council on Human Trafficking for the purpose of enhancing the development and coordination of law enforcement agencies and social services responders to fight commercial sexual exploitation as a form of human trafficking and to support victims.<sup>11</sup> The council is within the Department of Legal Affairs.<sup>12</sup> Each member serves a 4-year term. The duties of the council include:

- Developing recommendations for comprehensive programs and services for victims of human trafficking, including recommendations for certification criteria for safe houses and safe foster homes.
- Making recommendations for apprehending and prosecuting traffickers and enhancing coordination of responses.
- Hosting an annual statewide policy summit in conjunction with an institution of higher learning in this state.
- Working with the Department of Children and Families to create and maintain an inventory of human trafficking programs and services in each county, including, but not limited to, awareness programs and victim assistance services, and using that information to determine how to maximize existing resources and address unmet needs and emerging trends.
- Developing policy recommendations that advance the duties of the council and further the efforts to combat human trafficking in Florida.

Additionally, the council is required to submit a report to the President of the Senate and the Speaker of the House of Representatives summarizing its accomplishments during the preceding fiscal year and making recommendations regarding the development and coordination of state and local law enforcement and social services responses to fight human trafficking and support victims.<sup>13</sup>

### Civil Causes of Action

In general, a victim of human trafficking may have a common law cause of action against a trafficker for theft, false imprisonment, or intentional infliction of emotional distress. Additionally, there is a federal cause of action at 18 U.S.C. § 1595, which may be brought against any perpetrator who knowingly benefits from the trafficking of a victim.

Victims of human trafficking also have a state civil cause of action under ch. 772, F.S., related to civil remedies for criminal practices. Section 772.103, F.S., provides that it is unlawful for any person:

- Who has with criminal intent 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, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- To employ, or associate 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.
- To conspire or endeavor to violate any of the actions listed above.

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<sup>10</sup> Email from Chris Taylor, Legislative Analyst, Florida Department of Corrections, March 30, 2017, (on file with Justice Appropriations Subcommittee).

<sup>11</sup> See s. 16.617, F.S.

<sup>12</sup> S. 16.617(1), F.S.

<sup>13</sup> S. 16.617(5), F.S.<sup>14</sup> See s. 961.06(1)(a)

Section 772.104(2), F.S., provides a cause of action for victims of human trafficking where the victim has been injured by reason of a violation of s. 772.103, F.S. The cause of action allows for damages threefold the amount gained from the sex trafficking or human trafficking and reasonable attorney's fees and court costs in the trial and appellate courts. The standard of proof for such actions is by clear and convincing evidence.

The statute of limitations for a common law tort action against a trafficker is 4 years. The statute of limitations for an action pursuant to 18 U.S.C. § 1595 is 10 years. The statute of limitations for an action pursuant to s. 772.104(2), F.S., is 5 years.

### **Effect of the Bill**

The bill creates the "Civil Action for Human Trafficking and Prevention of Human Trafficking Act." The bill makes the following findings:

The legislature finds that, to achieve the goals of the state relating to human trafficking in s. 787.06(1)(d), it is necessary to provide a civil cause of action for the recovery of compensatory and punitive damages and costs.

### Civil Cause of Action

The bill creates a cause of action for a victim of human trafficking against the trafficker or facilitator who victimized him or her. The term facilitator is defined as "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." The definition does not include a person who facilitates human trafficking as a result of "force, threat, or coercion." With respect to facilitating human trafficking through willful blindness, the bill provides:

"Willful blindness" exists when a person has knowledge of information that would raise suspicions in a reasonable person and he or she deliberately refrains from obtaining confirmation of or acting on the information because he or she wants to remain in ignorance, such that knowledge of the facts avoided can reasonably and fairly be imputed to the person who avoided confirming it.

A victim may recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs in bringing the action. The bill provides for the measurement of economic damages. If the victim was forced into lawful labor, the victim is entitled to recover the fair market value of the labor or the amount realized by the trafficker, whichever is greater. A victim is also entitled to reimbursement for the time in captivity, payable at the same rate as one is paid by the state for wrongful incarceration (currently \$50,000 a year).<sup>14</sup>

The bill provides that 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. Noneconomic damages are calculated the same as in a tort action, which include pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life, and other nonfinancial losses.

The proof required is a preponderance of the evidence. The remedies provided in the Act are in addition to other legal and administrative remedies available to victims of human trafficking, except that a victim may not recover under both the Act and a civil cause of action brought under s. 772.104(2), F.S.

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<sup>14</sup> See s. 961.06(1)(a)  
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In addition to the damages stated above, if the victim prevails, the court must impose a \$100,000 civil penalty against the trafficker. This civil penalty may not be disclosed to the jury. If a law enforcement agency rescued the victim or located the property upon which the trafficking was taking place, the court must impose an additional \$50,000 penalty for the benefit of the law enforcement agency to be used in future efforts combating human trafficking. The penalties are in addition to any punitive damages award. The bill provides that any punitive damages awarded must be equally divided between the victim and the trust fund.

There is no statute of limitations for the civil cause of action created by this bill. The bill also grants the court specific authority to consolidate civil actions for the same trafficker or facilitator for the purpose of case resolution.

### Vicarious Liability Defense

Vicarious liability allows a party to be held liable for the actions of an employee or agent; liability is based on the legal imputation of responsibility for another party's acts.<sup>15</sup> An affirmative defense is an assertion of facts or law by the defendant that, if true, would avoid liability.<sup>16</sup>

The bill provides an affirmative defense for an owner or operator of a public lodging establishment when an action is brought against them based on a claim of vicarious liability. In actions alleging a violation of the Act against the owner or operator of a public lodging establishment based on vicarious liability, the owner or operator may avoid liability by proving, by a preponderance of the evidence, it:

- Required employees of the establishment reasonably expected to routinely interact with guests to complete an educational program designed to effectively train such employees in the identification and reporting of suspected human trafficking within 30 days of hiring or by July 1, 2019, whichever occurs later.
- Had in place an employee protocol or employee code of conduct to detect and report suspected human trafficking; and
- Took reasonable steps, before the first incident giving rise to such action, to ensure that any employees alleged in the action to have been facilitators of, or otherwise participants in, human trafficking, complied with the recommendations and practices suggested or required in the training, protocols, or policies.

### Application to Civil Actions under s. 772.104, F.S.

The bill amends s. 772.104, F.S., to provide that the requirements and limitations of a civil action under s. 772.104, F.S. do not apply to the cause of action created by this bill.

#### B. SECTION DIRECTORY:

**Section 1:** Creates a short title.

**Section 2:** Creates s. 787.061, F.S., relating to civil actions by victims of human trafficking.

**Section 3:** Amends s. 772.104, F.S., relating to a civil cause of action.

**Section 4:** Provides an effective date of July 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

<sup>15</sup> See generally, *National R.R. Passenger Corp. (Amtrak) v. Rountree Transport and Rigging, Inc.*, 422 F.3d 1275 (11th Cir. 2005).

<sup>16</sup> See *Custer Medical Center v. United Auto Ins. Co.*, 62 So.3d 1086 (Fla. 2010).

If a victim of human trafficking prevails in an action against the trafficker or facilitator, the bill requires a \$100,000 civil penalty to be assessed against the trafficker or facilitator. Civil penalties assessed must be deposited into the Trust Fund for Victims of Human Trafficking and Prevention. Additionally, punitive damages awarded to the victim of human trafficking are equally divided between the victim and the trust fund.

The revenue impact is indeterminate. The number of civil actions that may be brought against traffickers or facilitators is unknown and therefore, the amount of civil penalties and punitive damage awards that may be imposed and collected are also unknown.

2. Expenditures:

The bill creates a new civil cause of action, which may increase case filings in the State Courts System. The impact on judicial workload is indeterminate at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may provide an increase in local government revenues as it provides for a \$50,000 civil penalty to be awarded in favor of a law enforcement agency that rescued a victim or located the property upon which the abuse or exploitation of a victim occurred.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There is an indeterminate impact on victims of human trafficking who will be afforded an opportunity to receive compensatory and punitive damages.

A business or entity seeking to avoid liability will have to educate employees and take other steps necessary to avoid liability through the affirmative defense provided in the bill. The estimated cost is unknown.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.