

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 Children, Families, and Elder Affairs

BILL: SB 1826

INTRODUCER: Senator Diaz

SUBJECT: Human Trafficking

DATE: March 15, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Cox</u>	<u>CF</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1826 expands the definition and scope of human trafficking offenses, and establishes that communication between a human trafficking victim advocate and a victim is privileged.

The bill amends the definitions of “human trafficking” and “obtain,” and expands criminal offenses against a child under 18 to include circumstances where a person who is over 18 years of age is believed to be younger than 18 years of age by the perpetrator.

The bill creates a new section which establishes that communication by a victim to a human trafficking victim advocate or trained volunteer or any record made in the course of advising, counseling, or providing services to the victim is privileged. The terms anti-trafficking victim advocate, human trafficking victim advocate, trained volunteer, and victim are defined. Provisions are made for when communication is “confidential”, when the privileged information may be disclosed, and when the privilege may be claimed. The bill also provides training requirements for human trafficking victim advocates and trained volunteers.

Several sections are reenacted due to the amended definition of human trafficking.

To the extent that the amended definition of human trafficking in the bill results in persons being convicted and sentenced to imprisonment for this first degree felony offense, the bill may result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase of prison beds). See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Human Trafficking

Human trafficking is a form of modern-day slavery.¹ Human trafficking victims are young children, teenagers, and adults who may be citizens that are trafficked domestically within the borders of the United States or smuggled across international borders worldwide.² Many human trafficking victims are induced with false promises of financial or emotional security, but are forced or coerced into commercial sex, domestic servitude, or other types of forced labor.³ Any minor who is younger than 18 years old and who is induced to perform a commercial sex act is a human trafficking victim even if there is no forced fraud or coercion.⁴ Increasingly, criminal organizations, such as gangs, are enticing local school children into commercial sexual exploitation or trafficking.⁵ The average ages of youth who are trafficked are 11-13 years old.⁶

Congress passed the Victims of Trafficking and Violence Protection Act (Act) of 2000 to combat human trafficking by establishing several methods of prosecuting traffickers, preventing trafficking, and protecting victims.⁷ The Act contains severe penalties and mandates restitution for victims of human trafficking.⁸

The U.S. Department of Justice reports that every two minutes a child is trafficked for the purpose of sexual exploitation in the United States.⁹ Approximately 24.9 million people are human trafficking victims in the world.¹⁰ There are approximately 2.5 million victims of human trafficking in the United States.¹¹ The U.S. National Human Trafficking Hotline (NHTH) has received 276,654 reports of human trafficking between 2007 and 2019.¹²

The number of human trafficking cases listed in reports may not accurately reflect the number of actual cases of human trafficking because many traffickers are prosecuted for other crimes.¹³ Additionally, prosecutors often have difficulty proving the relationship at issue is one of human trafficking or a victim may be unwilling to testify against his or her trafficker in court.¹⁴

¹ Section 787.06(1)(a), F.S.

² *Id.*

³ The Department of Education (the DOE), *Healthy Schools – Human Trafficking*, available at <http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited March 15, 2021) (hereinafter cited as “DOE Human Trafficking”).

⁴ *Id.*

⁵ *Id.*

⁶ The DOE, Presentation to the State Board of Education, *Child Trafficking Prevention Education*, p. 3, September 20, 2019, available at <http://www.fldoe.org/core/fileparse.php/5575/urlt/ChildTraffickingPres.pdf> (last visited March 15, 2021) (hereinafter cited as “DOE Trafficking Prevention”).

⁷ Pub. L. No. 106-386 (2000).

⁸ *Id.*

⁹ DOE Human Trafficking.

¹⁰ National Human Trafficking Hotline, *What is Human Trafficking?*, available at <http://www.nationalhumantraffickinghotline.org/what-is-human-trafficking> (last visited March 15, 2021).

¹¹ DOE Human Trafficking.

¹² NHTH, *Hotline Statistics*, available at <https://humantraffickinghotline.org/states> (last visited March 15, 2021).

¹³ Nada Hassanein, *Preying on the vulnerable: Human trafficking prevalent yet elusive in the Big Bend*, Tallahassee Democrat, June 27, 2018, available at <https://www.tallahassee.com/story/news/2019/01/27/preying-vulnerable-human-trafficking-alive-and-well-big-bend/2648630002/> (last visited March 15, 2021).

¹⁴ *Id.*

Human Trafficking in Florida

Florida law defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,¹⁵ or obtaining¹⁶ another person for the purpose of exploitation of that person.¹⁷ In Florida, any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or 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 commits the crime.¹⁸ Florida law sets out several circumstances which give rise to specified penalties including, in part:

- Labor¹⁹ or services²⁰ of any child under the age of 18 commits a first degree felony;²¹
- Labor or services of any child under the age of 18 who is an unauthorized alien²² commits a first degree felony;²³
- Labor or services who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;
- Commercial sexual activity²⁴ who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;²⁵ or
- Commercial sexual activity²⁶ in which any child under the age of 18, or in which any person who is mentally defective²⁷ or mentally incapacitated²⁸ is involved commits a life felony.²⁹

¹⁵ Section 787.06(2)(f), F.S., provides “maintain” means, in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type service. Section 787.06(2)(h), F.S., defines “services” as any act committed at the behest of, under the supervision of, or for the benefit of another, including forced marriage, servitude, or the removal of organs.

¹⁶ Section 787.06(2)(g), F.S., provides “obtain” means, in relation to labor or services, to secure performance thereof.

¹⁷ Section 787.06(2)(d), F.S.

¹⁸ Section 787.06(3), F.S.

¹⁹ Section 787.06(2)(e), F.S., provides “labor” means work of economic or financial value.

²⁰ Section 787.06(2)(h), F.S., provides “services” means 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.

²¹ Section 787.06(3)(a)1., F.S. A first degree felony is punishable by a state prison term not exceeding 30 years, a fine not exceeding \$10,000, or both. Sections 775.082 and 775.083, F.S.

²² Section 787.06(2)(j), F.S., defines “unauthorized alien” as an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. s. 1324a(h)(3).

²³ Section 787.06(3)(c)1., F.S.

²⁴ Section 787.06(2)(b), F.S., defines “commercial sexual activity” as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines “sexual explicit performance” as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

²⁵ Section 787.06(3)(f)1., F.S., provides that an offense committed under these circumstances is punishable by a term of imprisonment not exceeding life or as provided in ss. 775.082, 775.083, or 775.084, F.S.

²⁶ Section 787.06(2)(b), F.S., defines “commercial sexual activity” as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines “sexual explicit performance” as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

²⁷ Section 794.011(1)(b), F.S., defines “mentally defective” as a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

²⁸ Section 794.011(1)(c), F.S., defines “mental incapacitated” as temporarily incapable of appraising or controlling a person’s own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

²⁹ A life felony is punishable by a term of life imprisonment, \$15,000 fine, or both as provided in s. 775.082(3)(a)6., F.S., s. 775.083, F.S., or s. 775.084, F.S.

The above-mentioned first degree felonies are reclassified as a life felony if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of the offense.³⁰ Ignorance of the victim's age, the victim's misrepresentation of his or her age, or a bona fide belief of the victim's age cannot be raised as a defense by a defendant.³¹

Florida is ranked the third highest state of reported human trafficking cases in the United States.³² In 2018, Florida received 767 reports of human trafficking cases of which 149 were minors.³³ In November 2018, an investigation in Polk County lead to the arrest of 103 people for charges including prostitution and human trafficking.³⁴ Similarly, in January 2019, a two month-long investigation lead to the arrest of a 36-year-old male in Tallahassee on prostitution and sex trafficking charges involving a 14-year old girl. At the time of his arrest, the male was already facing charges for sex trafficking a child in 2014.³⁵

Privileged Communications in the Evidence Code

The Florida Evidence Code (Code) specifies what types of evidence and testimony are admissible in court.³⁶ The Code makes certain communications privileged, meaning their disclosure generally cannot be compelled, even in legal proceedings.³⁷ Privileged communication is an interaction between two parties in which the law recognizes a private, protected relationship.³⁸

Typically, such communication only loses its privileged status if the person who made the original disclosure of such information waives the privilege, thus permitting the communication to be subject to general rules of evidence. A person is deemed to have waived the privilege if he or she voluntarily discloses the communication, makes it when he or she does not have a reasonable expectation of privacy, or consents to the disclosure of, any significant part of the communication.³⁹

³⁰ Section 787.06(8)(b), F.S.

³¹ Section 787.06(9), F.S.

³² DOE Trafficking Prevention at p. 3.

³³ DOE Trafficking Prevention.

³⁴ Daniel Dahm and Brianna Volz, *Orlando-area doctor among 103 arrested in Polk County sex sting, sheriff says*, ClickOrlando.com, (December 3, 2018), available at <https://www.clickorlando.com/news/103-arrested-in-polk-county-sex-sting> (last visited March 15, 2021).

³⁵ WTXL, *Human trafficking suspect accused of sex-trafficking child in Tallahassee*, (January 26, 2019), available at http://www.wtxl.com/news/human-trafficking-suspect-accused-of-sex-trafficking-child-in-tallahassee/article_9748879c-21a4-11e9-b768-5bb68f906ecc.html (last visited March 15, 2021).

³⁶ Chapter 90, F.S.

³⁷ See ss. 90.5035, 90.5036, and 90.502, F.S.; U.S. Legal, *Privileged Communications Law and Legal Definition*, available at <https://definitions.uslegal.com/p/privileged-communications/> (last visited March 15, 2021).

³⁸ Will Kenton, Investopedia, *Privileged Communication*, February 21, 2018, available at <https://www.investopedia.com/terms/p/privileged-communication.asp> (last visited March 15, 2021).

³⁹ Section 90.507, F.S.

Some examples of generally privileged communications include those occurring between a sexual assault counselor and victim⁴⁰ and a domestic violence advocate and victim.^{41, 42}

Sexual Assault Counselor and Victim

A victim⁴³ may refuse to disclose, and prevent anyone else from disclosing, a confidential communication made by the victim to a sexual assault counselor⁴⁴ or trained volunteer⁴⁵ or any record made in the course of advising, counseling, or assisting the victim.⁴⁶ This includes any advice given by the sexual assault counselor or trained volunteer to the victim during the course of their relationship.⁴⁷ Communication is “confidential” if it is not intended to be disclosed to third persons other than:

- Persons present to further the interest of the victim in the consultation, examination, or interview;
- Persons necessary for the transmission of the communication; or
- Persons to whom disclosure is reasonably necessary to accomplish the purposes for which the sexual assault counselor or the trained volunteer is consulted.⁴⁸

Communication and records which are confidential as provided for under this section may only be disclosed with prior written consent of the victim.⁴⁹ The privilege may be claimed by:

- The victim or the victim’s attorney on his or her behalf;
- A guardian or conservator of the victim;
- The personal representative of a deceased victim;
- The sexual assault counselor or trained volunteer, but only on behalf of the victim.⁵⁰

A sexual assault counselor’s or trained volunteer’s authority to claim the privilege is presumed unless there is evidence to the contrary.⁵¹

⁴⁰ Section 90.5035, F.S.

⁴¹ Section 90.5036, F.S.

⁴² Florida law provides for privileged communication amongst several other groups of individuals, including journalists under s. 90.5015, F.S., lawyer and client under s. 90.502, F.S., fiduciary lawyer and client under s. 90.5021, F.S., psychotherapist and patient under s. 90.503, F.S., husband and wife under s. 90.504, F.S., clergy under s. 90.505, F.S., accountant and client under s. 90.5055, F.S., and trade secrets under s. 90.506, F.S.

⁴³ Section 90.5035(1)(d), F.S., defines “victim” as a person who consults a sexual assault counselor or a trained volunteer for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a sexual assault or sexual battery, an alleged sexual assault or sexual battery, or an attempted sexual assault or sexual battery.

⁴⁴ Section 90.5035(1)(b), F.S., defines “sexual assault counselor” as any employee of a rape crisis center whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault or sexual battery. Section 90.5035(1)(a), F.S., defines “rape crisis center” as any public or private agency that offers assistance to victims of sexual assault or sexual battery and their families.

⁴⁵ Section 90.5035(1)(c), F.S., defines “trained volunteer” as a person who volunteers at a rape crises center, has completed 30 hours of training in assisting victims of sexual violence and related topics provided by the rape crisis center, is supervised by members of the staff of the rape crisis center, and is included on a list of volunteers that is maintained by the rape crisis center.

⁴⁶ Section 90.5035(2), F.S.

⁴⁷ *Id.*

⁴⁸ Section 90.5035(1)(e), F.S.

⁴⁹ *Id.*

⁵⁰ Section 90.5035(3), F.S.

⁵¹ Section 90.5035(3)(d), F.S.

Domestic Violence Advocate and Victim

Similar to communication with a sexual abuse counselor, a victim⁵² may refuse to disclose, and prevent anyone else from disclosing, a confidential communication made by the victim to a domestic violence advocate⁵³ or any record made in the course of advising, counseling, or assisting the victim.⁵⁴ This privilege applies only if the advocate is registered under s. 39.905, F.S., at the time the communication is made, and includes any advice given by the domestic violence advocate to the victim during the course of their relationship.⁵⁵ Communication is “confidential” if it relates to the incident of domestic violence for which assistance is sought and if it is not intended to be disclosed to third persons other than:

- Persons present to further the interest of the victim in the consultation, assessment, or interview; or
- Persons to whom disclosure is reasonably necessary to accomplish the purpose for which the domestic violence advocate is consulted.⁵⁶

The privilege may be claimed by:

- The victim or the victim’s attorney on behalf of the victim;
- A guardian or conservator of the victim;
- The personal representative of a deceased victim;
- The domestic violence advocate, but only on behalf of the victim.⁵⁷

A domestic violence advocate’s authority to claim the privilege is presumed unless there is evidence to the contrary.⁵⁸

III. Effect of Proposed Changes:

Human Trafficking

The bill amends the definition of “human trafficking” to include purchasing, patronizing, or procuring another person for the purpose of exploitation of that person. The definition of “obtain” is also amended to mean, in relation to labor, *commercial sexual activity*, or services, to *receive, take possession of, or take custody of another person or secure performance thereof*.

All of the first degree felony or life felony offenses of human trafficking described above committed against a child under the age of 18 are expanded to include if the person committing the offense of human trafficking believed the person he or she trafficked is a child younger than 18 years of age.

⁵² Section 90.5036(1)(c), F.S., defines “victim” as a person who consults a domestic violence advocate for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by an act of domestic violence, an alleged act of domestic violence, or an attempted act of domestic violence.

⁵³ Section 90.5036(1)(b), F.S., defines “domestic violence advocate” as any employee or volunteer who has 30 hours of training in assisting victims of domestic violence whose primary purpose is the rendering of advice, counseling, or assistance to victims of domestic violence.

⁵⁴ Section 90.5036(2), F.S.

⁵⁵ *Id.*

⁵⁶ Section 90.5036(1)(d), F.S.

⁵⁷ Section 90.5036(3), F.S.

⁵⁸ Section 90.5036(3)(d), F.S.

Privilege

The bill also creates s. 90.5034, F.S., to establish a communication privilege between human trafficking victim advocates and victims similar to the sexual assault counselor-victim privilege and the domestic violence advocate-victim privilege described above. The bill provides a number of definitions, including:

- An “anti-trafficking organization”, which is defined as any public or private agency that offers assistance to victims of human trafficking as defined in s. 787.06, F.S.
- A “human trafficking advocate”, which is defined as any employee of an anti-trafficking organization whose primary purpose is the provision of advice, counseling, or services to victims of human trafficking and who complies with the training requirements.
- A “trained volunteer”, which is defined as a person who volunteers with an anti-trafficking organization and who complies with the training requirements provision of the bill.
- A “victim”, which is defined as a person who consults a human trafficking victim advocate or a trained volunteer for the purpose of securing advice, counseling, or services concerning any need arising from an experience relating to being a victim of human trafficking.

A victim may refuse to disclose, and prevent any other person from disclosing, a confidential communication made by the victim to a human trafficking victim advocate or trained volunteer or any record made in the course of advising, counseling, or providing services to the victim. This includes any advice given by the human trafficking victim advocate or trained volunteer to the victim during the course of their relationship. Communication is “confidential” if it is not intended to be disclosed to third persons other than:

- Persons present to further the interest of the victim in the consultation, examination, or interview;
- Persons necessary for the transmission of the communication; or
- Persons to whom disclosure is reasonably necessary to accomplish the purposes for which the sexual assault counselor or the trained volunteer is consulted.

Communication and records which are confidential as provided for under this new section may only be disclosed with prior written consent of the victim. The privilege may be claimed by:

- The victim or the victim’s attorney on his or her behalf;
- A guardian or conservator of the victim;
- The personal representative of a deceased victim;
- The human trafficking victim advocate or trained volunteer, but only on behalf of the victim.⁵⁹

A human trafficking victim advocate’s or trained volunteer’s authority to claim the privilege is presumed unless there is evidence to the contrary.

A human trafficking victim advocate or a trained volunteer must complete:

- Twenty-four hours of human trafficking training delivered by the Office of the Attorney General, the Bureau of Criminal Justice Programs and Victim Services, and the Florida Crime Prevention Training Institute; and

⁵⁹ Section 90.5035(3), F.S.

- An 8-hour Human Trafficking Update course within 3 years after the date of his or her initial designation in order to maintain his or her designation.

Sections 39.01305(3), 464.013(3)(c), 775.21(4)(a), 943.0435(1)(h), 943.0583(1)(a), and 944.606(1)(f), F.S., are reenacted due to the amended definition of human trafficking.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference with the Office of Economic and Demographic Research has not yet met and determined the impact of the bill. However, the bill expands certain definitions related to the offense of human trafficking. To the extent that the amended scope of the human trafficking offense in the bill results in persons being

convicted and sentenced to imprisonment, the bill may result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase of prison beds).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 787.06 of the Florida Statutes.

This bill creates section 90.5034 of the Florida Statutes.

This bill reenacts sections 39.01305, 464.013, 775.21, 943.0435, 943.0583, and 944.606 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.