

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 Rules

BILL: CS/CS/SB 1826

INTRODUCER: Rules Committee; Criminal Justice Committee; and Senator Diaz

SUBJECT: Human Trafficking

DATE: April 7, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|----------------|-----------|------------------|
| 1. | <u>Moody</u> | <u>Cox</u> | <u>CF</u> | Favorable |
| 2. | <u>Stokes</u> | <u>Jones</u> | <u>CJ</u> | Fav/CS |
| 3. | <u>Moody</u> | <u>Phelps</u> | <u>RC</u> | Fav/CS |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1826 creates s. 90.5034, F.S., establishing a privilege for communication between human trafficking victims and human trafficking advocates or trained volunteers. The bill provides that communication between a human trafficking victim advocate or trained volunteer and a human trafficking victim is “confidential,” if it is not intended to be disclosed to third persons, except to specified persons. A human trafficking victim has a privilege to refuse to disclose, and prevent any other person from disclosing such confidential communication or record made in the course of advising, counseling, or providing services to the victim. Additionally, the bill defines the terms “anti-human trafficking organization,” “human trafficking victim advocate,” “trained volunteer,” and “human trafficking victim,” and provides training requirements for human trafficking victim advocates and trained volunteers.

The bill amends s. 787.06, F.S., to expand the definition of “human trafficking,” to include the “purchasing, patronizing, [or] procuring” another person for the purpose of exploitation of that person. Additionally, the definition of “obtain,” is 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.” The bill expands the scope of specified human trafficking offenses relating to children under 18 years of age to include an adult believed to be under 18 years of age. The bill provides that the Legislature encourages each state attorney to adopt a pro-prosecution policy for human trafficking offenses, and requires the state attorney to determine whether to file, nonfile, or divert criminal charges even when there is no cooperation from a victim or over the objection of the victim, if necessary.

The bill also expands the list of offenses in which a court must impose special conditions on probationers or community controllees who are placed under supervision or on community control or sex offender probation for committing a specified human trafficking offense on or after a certain date.

For purposes of incorporating the amendments made in the bill, ss. 39.01305, 464.013, 775.21, 943.0435, 943.0583, and 944.606, F.S., are reenacted.

To the extent that the amended definition of human trafficking in the bill results in persons being convicted and sentenced to prison at the initial sentencing hearing or as a result of a violation of probation or community control, 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

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 April 7, 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 April 7, 2021) (hereinafter cited as “DOE Trafficking Prevention”).

⁷ Pub. L. No. 106-386 (2000).

⁸ *Id.*

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

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 for labor or services, or commercial sexual activity, commits a 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

⁹ DOE Human Trafficking.

¹⁰ National Human Trafficking Hotline, *What is Human Trafficking?*, available at <https://humantraffickinghotline.org/what-human-trafficking> (last visited April 7, 2021).

¹¹ DOE Human Trafficking.

¹² NHTH, *Hotline Statistics*, available at <https://humantraffickinghotline.org/states> (last visited April 7, 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 April 7, 2021).

¹⁴ *Id.*

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.

- 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;²⁴
- Commercial sexual activity²⁵ 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;²⁶ or
- Commercial sexual activity²⁷ in which any child under the age of 18, or in which any person who is mentally defective²⁸ or mentally incapacitated²⁹ is involved commits a life felony.³⁰

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.³¹ Ignorance of the human trafficking 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.³²

Florida is ranked the third highest state of reported human trafficking cases in the United States.³³ In 2018, Florida received 767 reports of human trafficking cases of which 149 were minors.³⁴ In November 2018, an investigation in Polk County lead to the arrest of 103 people for charges including prostitution and human trafficking.³⁵ 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 2014.³⁶

²⁴ Section 787.06(3)(e)1., F.S.

²⁵ 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.

²⁶ 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.

²⁷ 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.

²⁸ 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.

²⁹ 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.

³⁰ A life felony is punishable by a term of life imprisonment, \$15,000 fine, or both as provided in ss. 775.082(3)(a)6., 775.083, or 775.084, F.S.

³¹ Section 787.06(8)(b), F.S.

³² Section 787.06(9), F.S.

³³ DOE Trafficking Prevention at p. 3.

³⁴ DOE Trafficking Prevention.

³⁵ 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 April 7, 2021).

³⁶ 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 April 7, 2021).

Probation or Community Control

Any state court having original jurisdiction of criminal actions has the discretion to sentence a defendant who has been found guilty or entered a plea of guilty or nolo contendere to probation³⁷ or community control³⁸ in certain circumstances.³⁹ There are a few types of probation or community control (supervision) that the court may impose if specified conditions are met, such as drug offender probation,⁴⁰ sexual offender probation, or sexual offender community control.⁴¹

Current law provides for standard terms that a court may impose as a condition of probation or community control which include, in part, that the offender must:

- Report to the probation officer as directed;
- Permit the probation officer to visit him or her at his or her home or elsewhere;
- Work faithfully to obtain suitable employment, if possible;
- Remain within a specified place; and
- Live without violating any law.⁴²

Special Conditions of Supervision

Current law also requires a court to impose additional conditions of supervision on a person who is convicted of an offense provided for in ch. 794, F.S.,⁴³ and ss. 800.04,⁴⁴ 827.071,⁴⁵ 847.0135(5),⁴⁶ and 847.0145, F.S.,⁴⁷ which was committed on or after October 1, 1995, including, in part:

- A mandatory 8-hour curfew, such as 10 p.m. to 6 a.m.;
- If the victim was under the age of 18 years old, a prohibition on contact or living within 1,000 feet of a school and other places where children regularly congregate as specified in the section;
- A prohibition on any contact with the victim if specified conditions are met;
- Active participation in and successful completion of a sexual offender treatment program with certain specifications;

³⁷ Section 948.001(8), F.S., defines “probation” as a form of community supervision requiring specified contacts with probation officers and other terms and conditions as provided in s. 948.03, F.S.

³⁸ Section 948.001(3), F.S., defines “community control” as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.

³⁹ Section 948.01(1), F.S.

⁴⁰ Section 948.001(4), F.S., defines “drug offender probation” as a form of intensive supervision that emphasizes treatment of drug offenders in accordance with individualized treatment plans administered by officers with restricted caseloads.

⁴¹ Section 948.001(13), F.S., defines “sexual offender probation” or “sexual offender community control” as a form of intensive supervision, with or without electronic monitoring, which emphasizes treatment and supervision of a sex offender in accordance with an individualized treatment plan administered by an officer who has a restricted caseload and specialized training.

⁴² See s. 948.03, F.S.

⁴³ Offenses relating to sexual battery.

⁴⁴ Lewd or lascivious offenses.

⁴⁵ Offenses related to sexual performance by a child.

⁴⁶ Offenses related to computer pornography, prohibited computer usage, and traveling to meet a minor.

⁴⁷ Offenses related to selling or buying minors.

- Submit a specimen of blood or other approved biological specimen to be registered with the DNA data bank;
- Make restitution to the victim as ordered by the court for certain services; and
- Submit to a warrantless search by the community control or probation officer of the probationer's or community controllee's person, residence, or vehicle.⁴⁸

Current law also requires a court to impose additional conditions of supervision on a person who is placed on community control or sex offender probation for a violation of the one of the above listed offenses committed on or after October 1, 1997, including, in part:

- Participation at least annually in polygraph examinations for specified purposes and with specified conditions;
- Maintenance of a driving log and prohibition against driving a motor vehicle alone without prior approval;
- Prohibition against obtaining or using a post office box without prior approval;
- Submission to an HIV test with specified conditions; and
- Electronic monitoring when deemed necessary and ordered by the court.⁴⁹

Violations of Supervision

If an offender violates the terms of his or her probation or community control, the supervision can be revoked in accordance with s. 948.06, F.S.⁵⁰ A violation of probation (VOP) or a violation of community control (VOCC) can be the result of a new violation of law or a technical violation of the conditions imposed. A law enforcement officer may arrest a probationer or offender on community control when there is reasonable grounds to believe that he or she violated the terms or conditions of supervision in a material respect.⁵¹ Also, the committing trial court judge may issue an arrest warrant or a notice to appear in specified circumstances.⁵² If the alleged offender is arrested and brought before the court, it may commit the alleged offender or release the person with or without bail.⁵³

Upon a finding through a VOP or VOCC hearing, a court may revoke, modify, or continue the supervision. If the court chooses to revoke the supervision, it may impose any sentence originally permissible before placing the offender on supervision.⁵⁴ A probationer or offender on community control may be eligible for an alternative sentencing program at the discretion of the probation officer in lieu of the officer filing an affidavit of violation with the court if the probationer or offender of community control has committed a technical violation⁵⁵ of the court-ordered supervision.⁵⁶

⁴⁸ Section 948.30(1), F.S.

⁴⁹ Section 948.30(2), F.S.

⁵⁰ Section 948.10(3), F.S.

⁵¹ Section 948.06(1)(a), F.S.

⁵² Section 948.06(1)(b), F.S.

⁵³ Section 948.06(1)(e)2.a., F.S.

⁵⁴ Section 948.06(2)(b), F.S.

⁵⁵ Section 948.06(1)(c), F.S. defines "technical violation" as an alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense.

⁵⁶ *Id.*

Privileged Communications in the Evidence Code

The Florida Evidence Code (Code) specifies what types of evidence and testimony are admissible in court.⁵⁷ The Code makes certain communications privileged, meaning their disclosure generally cannot be compelled, even in legal proceedings.⁵⁸ Privileged communication is an interaction between two parties in which the law recognizes a private, protected relationship.⁵⁹ Some examples of generally privileged communications include communications between a sexual assault counselor and victim,⁶⁰ domestic violence advocate and victim,⁶¹ a lawyer and client,⁶² and a husband and wife.⁶³

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.⁶⁴

Sexual Assault Counselor and Victim

A victim⁶⁵ has a privilege to refuse to disclose, and to prevent anyone else from disclosing, a confidential communication made by the victim to a sexual assault counselor⁶⁶ or trained volunteer⁶⁷ or any record made in the course of advising, counseling, or assisting the victim.⁶⁸ This includes any advice given by the sexual assault counselor or trained volunteer to the victim during the course of their relationship.⁶⁹ Communication is “confidential” if it is not intended to be disclosed to third persons other than:

⁵⁷ Chapter 90, F.S.

⁵⁸ 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 April 7, 2021).

⁵⁹ Will Kenton, Investopedia, *Privileged Communication*, February 21, 2018, available at <https://www.investopedia.com/terms/p/privileged-communication.asp> (last visited April 7, 2021).

⁶⁰ Section 90.5035, F.S.

⁶¹ Section 90.5036, F.S.

⁶² Section 90.502, F.S.

⁶³ Section 90.504, F.S.; 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.

⁶⁴ Section 90.507, F.S.

⁶⁵ 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.

⁶⁶ 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.

⁶⁷ 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.

⁶⁸ Section 90.5035(2), F.S.

⁶⁹ *Id.*

- 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.⁷⁰

Communication and records which are confidential as provided for under this section may only be disclosed with prior written consent of the victim.⁷¹ 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.⁷²

A sexual assault counselor's or trained volunteer's authority to claim the privilege is presumed unless there is evidence to the contrary.⁷³

Domestic Violence Advocate and Victim

Similar to communication with a sexual abuse counselor, a victim⁷⁴ may refuse to disclose, and prevent anyone else from disclosing, a confidential communication made by the victim to a domestic violence advocate⁷⁵ or any record made in the course of advising, counseling, or assisting the victim.⁷⁶ 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.⁷⁷ 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.⁷⁸

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;

⁷⁰ Section 90.5035(1)(e), F.S.

⁷¹ Section 90.5035(2), F.S.

⁷² Section 90.5035(3), F.S.

⁷³ Section 90.5035(3)(d), F.S.

⁷⁴ 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.

⁷⁵ 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.

⁷⁶ Section 90.5036(2), F.S.

⁷⁷ *Id.*

⁷⁸ Section 90.5036(1)(d), F.S.

- The domestic violence advocate, but only on behalf of the victim.⁷⁹

A domestic violence advocate's authority to claim the privilege is presumed unless there is evidence to the contrary.⁸⁰

III. Effect of Proposed Changes:

Privilege

The bill creates s. 90.5034, F.S., establishing a privilege for communication between human trafficking victims and human trafficking victim advocates or trained volunteers. The bill provides that communication between a human trafficking victim advocate or trained volunteer and a human trafficking victim is "confidential," if it is not intended to be disclosed to third persons, except to:

- Persons present to further the interest of the human trafficking 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.

A human trafficking victim may refuse to disclose, and prevent any other person from disclosing, a confidential communication made by the human trafficking 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 human trafficking victim during the course of their relationship.

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

- The human trafficking victim or the victim's attorney on his or her behalf;
- A guardian or conservator of the human trafficking victim;
- The personal representative of a deceased human trafficking victim;
- The human trafficking victim advocate or trained volunteer, but only on behalf of the human trafficking victim.⁸¹

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

The bill provides that 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

⁷⁹ Section 90.5036(3), F.S.

⁸⁰ Section 90.5036(3)(d), F.S.

⁸¹ 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.

Additionally, the bill defines the following terms:

- “Anti-human trafficking organization,” is any public or private agency that offers assistance to victims of human trafficking as defined in s. 787.06, F.S.
- “Human trafficking victim advocate,” is 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.
- “Trained volunteer,” is a person who volunteers with an anti-trafficking organization and who complies with the training requirements provision of the bill.
- “Human trafficking victim,” is 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.

Human Trafficking

The bill amends s. 787.06, F.S., to expand the definition of “human trafficking,” to include the “purchasing, patronizing, [or] procuring” another person for the purpose of exploitation of that person. Additionally, the definition of “obtain,” is 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.” The bill also expands all of the first degree felony or life felony offenses of human trafficking described above committed against a child under the age of 18 to include an adult believed to be under 18 years of age.

The bill provides that the Legislature encourages each state attorney to adopt a pro-prosecution policy for human trafficking offenses, and requires the state attorney to determine whether filing, nonfiling, or diversion of criminal charges are appropriate after consulting or making a good faith attempt to consult the victim even when there is no cooperation from a victim or over his or her objection.

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.

Special Conditions of Supervision

The bill expands the list of offenses in which the court is required to impose special conditions of probation, community control, or sexual offender probation as provided for under s. 948.30, F.S., to include human trafficking offenses that are committed on or after July 1, 2021, which relate to commercial sexual activity under s. 787.06(3)(b), (d), (f), or (g), F.S.

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. Additionally, the bill expands the number of persons that will be required to comply with the additional conditions of supervision required under s. 948.30, F.S., to include persons convicted of specified human trafficking offenses listed above. To the extent that the amended scope of the human trafficking offense in the bill results in persons being convicted and sentenced to prison at the initial sentencing hearing or as a result of a VOP or VOCC, 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 sections 787.06 and 948.30 of the Florida Statutes.

This bill creates section 90.5034 of the Florida Statutes.

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

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 Rules on April 6, 2021:

The committee substitute:

- Incorporates a finding that the Legislature encourages each state attorney to adopt a pro-prosecution policy for acts of human trafficking;
- Requires the state attorney to make a determination of filing, nonfiling, or diversion of criminal charges even in circumstances when the decision to file is over the victim's objection;
- Adds specified human trafficking offenses relating to commercial sexual activity committed on or after July 1, 2021 to the list of offenses that require a court to impose special conditions of supervision on certain probationers or community controllees; and
- Makes technical amendments to the language establishing the human trafficking victim advocate privilege.

CS by Criminal Justice on March 23, 2021:

The committee substitute is a clarifying amendment that replaces the phrase "or another person believed by the person to be a child," with "or an adult believed by the person to be a child."

B. Amendments:

None.