

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 1439 Prostitution, Lewdness, Human Trafficking, and Public Lodging
SPONSOR(S): Judiciary Committee, Commerce Committee, Criminal Justice & Public Safety Subcommittee, Toledo and others
TIED BILLS: HB 1441 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	16 Y, 0 N, As CS	Mathews	Hall
2) Commerce Committee	22 Y, 0 N, As CS	Wright	Hamon
3) Judiciary Committee	20 Y, 0 N, As CS	Mathews	Kramer

SUMMARY ANALYSIS

Human trafficking is modern day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person. Victims can be exploited for commercial sex in numerous contexts and traffickers frequently leverage and exploit legitimate businesses or institutions such as social media, financial institutions, transportation systems, and hotels or motels to carry out illegal activities.

In Florida public lodging establishments are regulated by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation. Florida law does not currently prohibit operators of public lodging establishments from offering hourly rates for accommodations. CS/CS/CS/HB 1439 prohibits an operator of a public lodging establishment from offering an hourly rate for an accommodation.

Under s. 796.07, F.S., a person who solicits, induces, or procures another person to commit prostitution commits a first degree misdemeanor for a first violation and is subject to additional penalties including, but not limited to, community service, inclusion of the offender's name on the Soliciting for Prostitution Public Database, and a \$5,000 civil penalty. A person who purchases the services of another person engaged in prostitution commits a second degree misdemeanor for a first violation. CS/CS/CS/HB 1439 amends s. 796.07, F.S., to increase the penalties for soliciting, enticing, or procuring another person to commit prostitution and purchasing the services of any person engaged in prostitution to a third degree felony for a first offense. The bill subjects a person convicted of purchasing prostitution to the same additional penalties currently imposed for a conviction for soliciting another person to commit prostitution.

Section 943.9583, F.S., authorizes a victim of human trafficking to be eligible for expunction of his or her criminal record related to a human trafficking scheme of which the person was a victim or when the offense was committed at the direction of an operator of the scheme. However, certain violent felony offenses listed under s. 775.084(1)(b)1, F.S., are not eligible for expunction. CS/CS/CS/HB 1439 amends s. 943.0583, F.S., to authorize a victim to seek expunction for an arrest or charges filed for such criminal offenses, so long as he or she was not found guilty of, or did not plead guilty or nolo contendere to, the offense.

Currently, there is no singular statewide data repository for human trafficking data and reports. The bill creates s. 1004.343, F.S., to create the Statewide Data Repository for Anonymous Human Trafficking Data (Repository). The bill requires the University of South Florida Trafficking in Persons – Risk to Resilience Lab to work with law enforcement and required reporting entities to collect, analyze, and distribute data relating to human trafficking in Florida.

The bill may have an indeterminate positive impact on prison beds by creating new felony offenses and increasing penalties for current felony offenses.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Human trafficking is modern day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person. Victims may be exploited for commercial sex in numerous contexts, including street prostitution, illicit massage parlors, brothels, escort services, and online advertising. Further, traffickers frequently leverage and exploit legitimate businesses or institutions such as social media, financial institutions, transportation systems, and hotels or motels.

Public Lodging Establishments and Vacation Rentals

Background

According to research, human trafficking for commercial sexual activity commonly takes place in hotels or motels.¹ In Florida, public lodging establishments and vacation rentals are regulated by the Division of Hotels and Restaurants (H&R) of the Department of Business and Professional Regulation, under ch. 509, F.S. Each public lodging establishment must obtain a license from H&R and is subject to inspections.²

“Public lodging establishment” includes:³

- “Transient public lodging establishments,” which means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days, or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.
- “Nontransient public lodging establishments,” which means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

Classifications of public lodging establishments include apartments, hotels, motels, vacation rentals, bed and breakfast inns, and timeshare projects.⁴

If a public lodging establishment operates in violation of ch. 509, F.S., or H&R rules, H&R may impose the following disciplinary actions:⁵

- Fines not to exceed \$1,000 per offense; and
- Suspension, revocation, or refusal of a license.

Currently, public lodging establishments are not prohibited from offering hourly rates for accommodations to customers.

Effect of Proposed Changes

¹ The Polaris Project, *The Typology of Modern Slavery: Defining Sex and Labor Trafficking in the United States*, (March 2017) <https://polarisproject.org/wp-content/uploads/2019/09/Polaris-Typology-of-Modern-Slavery-1.pdf> (last visited Feb.8, 2022).

² Ss. 509.032(2) and 509.241(1), F.S.

³ S. 509.013(4), F.S.

⁴ S. 509.242, F.S.

⁵ S. 509.261(1), F.S.

CS/CS/CS/HB 1439 creates s. 509.098, F.S., to prohibit an operator of a public lodging establishment or from offering an hourly rate for an accommodation.

Soliciting or Purchasing Prostitution

Background

Section 796.07, F.S., defines prostitution as the giving or receiving of the body for sexual activity for hire.⁶

Under s. 796.07(2)(a)-(e) and (g)-(i), F.S., it is a second degree misdemeanor:⁷

- To own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution;
- To offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act;
- To receive, or to offer or agree to receive, any person into any place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose;
- To direct, take, or transport, or to offer or agree to direct, take, or transport, any person to any place, structure, or building, or to any other person, with knowledge or reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation;
- For a person 18 years of age or older to offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation;
- To reside in, enter, or remain in, any place, structure, or building, or to enter or remain in any conveyance, for the purpose of prostitution, lewdness, or assignation;
- To aid, abet, or participate in any of the acts or things listed above; or
- *To purchase the services of any person engaged in prostitution.*⁸

The penalty for a violation listed above is reclassified to a first degree misdemeanor for a second violation, and a third degree felony for any third or subsequent violation.⁹

Additionally, under s. 796.07(f), F.S., a person who solicits, induces, or procures another person to commit prostitution, lewdness,¹⁰ or assignation¹¹ commits a first degree misdemeanor for a first violation, a third degree felony for a second violation, and a second degree felony for a third or subsequent violation.¹² An offender convicted for soliciting another person to commit prostitution is also subject to additional penalties including:

- Being required to complete 100 hours of community service;¹³
- Being required to attend an offender education program specific to human trafficking and prostitution, if such a program is offered in the circuit in which the offender is sentenced;¹⁴
- A 10-day mandatory minimum jail sentence for a second or subsequent violation;¹⁵
- Vehicle impoundment if the offender used a car to commit the violation;¹⁶
- Inclusion of the offender's name on the Soliciting for Prostitution Public Database;¹⁷ and

⁶ This definition excludes sexual activity between spouses. S. 796.07(1)(a), F.S.

⁷ A second degree misdemeanor is punishable by up to 60 days in county jail and a fine not exceeding \$500. Ss. 775.082 and 775.083, F.S.

⁸ S. 796.07(2), F.S.

⁹ S. 796.07(4), F.S.

¹⁰ Lewdness means any indecent or obscene act. S. 796.07(1)(b), F.S.

¹¹ Assignation means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement. S. 796.07(1)(c), F.S.

¹² S. 796.07(2)(f), F.S.

¹³ S. 796.07(5)(b)1., F.S.

¹⁴ S. 796.07(5)(b)2., F.S.

¹⁵ S. 796.07(5)(c), F.S.

¹⁶ S. 796.07(5)(d), F.S.

¹⁷ S. 796.07(5)(e), F.S.

- A \$5,000 civil fine.¹⁸

Effect of Proposed Changes

CS/CS/CS/HB 1439 amends s. 796.07, F.S., to increase the penalties for both the offenses of soliciting, enticing, or procuring another person to commit prostitution, lewdness, or assignation, and for purchasing the services of any person engaged in prostitution. Under the bill, the penalties for soliciting, inducing, enticing, or procuring another person to commit prostitution increase from a:

- First degree misdemeanor to a third degree felony for a first violation.
- Third degree felony to a second degree felony for a second violation.
- Second degree felony to a first degree felony for a third or subsequent violation.

The penalties for purchasing the services of any person engaged in prostitution increase from a:

- Second degree misdemeanor to a third degree felony for a first violation.
- First degree misdemeanor to a second degree felony for a second violation.
- Third degree felony to a first degree felony for a third or subsequent violation.

The bill aligns the penalties for purchasing prostitution with the current penalties for soliciting another person to commit prostitution. As such, under the bill, an offender convicted for purchasing prostitution will be subject to additional penalties including:

- Being required to complete 100 hours of community service;
- Being required to attend an offender education program specific to human trafficking and prostitution, if such a program is offered in the circuit in which the offender is sentenced;
- A 10-day mandatory minimum jail sentence for a second or subsequent violation;
- Vehicle impoundment if the offender used a car to commit the violation;
- Inclusion of the offender's name on the Soliciting for Prostitution Public Database; and
- A \$5,000 civil fine.

Human Trafficking

Human Trafficking Victim Expunction

Background

In 2013, the Legislature created a process authorizing a victim of human trafficking to petition a court for the expunction of a criminal history record resulting from his or her arrest or filing of charges, regardless of the disposition of the arrest or charges, for an offense committed or reported to have been committed while he or she was a victim of human trafficking. For purposes of human trafficking victim expunction, "victim of human trafficking" means a person subjected to coercion¹⁹ for the purpose of being used in human trafficking, a child or person believed to be a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.

To be eligible for expunction, the criminal offense must be related to a human trafficking scheme of which the person was a victim or the offense must have been committed at the direction of an operator of the scheme,²⁰ and must *not* be one of the following offenses:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;

¹⁸ S. 796.07(6), F.S.

¹⁹ As defined in s. 787.06, F.S.

²⁰ S. 943.0583, F.S.

- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery; or
- Aggravated stalking.

The court with original jurisdiction over the crime the human trafficking victim seeks to expunge is the court designated to hear the victim's petition.²¹ A petition must be initiated by the petitioner with due diligence after he or she is no longer a victim of human trafficking or has sought human trafficking services.²² The petition must be accompanied by the following:

- A sworn statement attesting that the petitioner is eligible for an expunction to the best of his or her knowledge and does not have other petitions to expunge or seal pending before any court; and
- Official documentation of the petitioner's status as a human trafficking victim, if any exists.²³

Under s. 943.0583, F.S., a petition for expunction that includes official documentation of the victim's status as a human trafficking victim, though not required, creates a presumption that his or her participation in the offense was a result of having been a human trafficking victim. A determination on a petition for expunction with official documentation of victim status requires a showing of a preponderance of the evidence.²⁴ ²⁵ For a petition for expunction that does not include official documentation of the victim's status, a determination of expunction requires a showing of clear and convincing evidence.²⁶ Clear and convincing evidence is a higher burden of proof than a preponderance of the evidence.

Any criminal history record of a person that is ordered expunged under s. 943.0583, F.S., must be physically destroyed by any criminal justice agency having custody of such record.²⁷ However, any criminal history record in the custody of FDLE must be retained in all cases.²⁸ A human trafficking victim may lawfully deny or fail to acknowledge any expunged record unless he or she is applying for a job with a criminal justice agency or is a defendant in a subsequent criminal prosecution.²⁹

Effect of Proposed Changes

The bill expands the types of offenses for which human trafficking victim expunction is available by authorizing a human trafficking victim to seek expunction for an arrest or charges filed for the following offenses, so long as he or she was not found guilty of, or plead guilty or nolo contendere to, the offense:

- Arson;
- Sexual battery;

²¹ S. 943.0583(2), F.S.

²² S. 943.0583(4), F.S.

²³ S. 943.0583(6), F.S.

²⁴ S. 943.0583(3), F.S.

²⁵ Under the preponderance standard, the burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true. Cornell Law School: Legal Information Institute, *Preponderance of the Evidence*, https://www.law.cornell.edu/wex/preponderance_of_the_evidence (last visited Feb. 8, 2022).

²⁶ According to the Supreme Court in *Colorado v. New Mexico*, 467 U.S. 310 (1984), "clear and convincing" means that the evidence is highly and substantially more likely to be true than untrue; the fact finder must be convinced that the contention is highly probable. Cornell Law School: Legal Information Institute, *Clear and Convincing Evidence*, https://www.law.cornell.edu/wex/clear_and_convincing_evidence#:~:text=Definition,the%20contention%20is%20highly%20probable. (last visited Feb. 8, 2022).

²⁷ S. 943.0583(8), F.S.

²⁸ *Id.*

²⁹ S. 943.0583(8)(b), F.S.

- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;
- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery; or
- Aggravated stalking.

The bill removes the requirement that petitions submitted without official documentation of the victim's status include a showing of clear and convincing evidence. As such, the burden of proof reverts to the standard requirement of a preponderance of the evidence, lowering the evidentiary threshold a victim must meet in order to obtain an expunction without official documentation of his or her victim status.

Statewide Data Repository for Anonymous Human Trafficking Data

Background

Currently, human trafficking data is collected across multiple agencies and entities. However, there is no singular, uniform statewide data repository for human trafficking data.

FDLE's Uniform Crime Report (UCR) system provides standardized reports on crime statistics based on statewide data.³⁰ The fundamental objectives of the Florida UCR Program are to:

- Collect accurate summary crime data from all law enforcement agencies in the state;
- Maintain agency crime statistics in a statewide database and provide a barometer of the frequency and clearance rates of certain crimes;
- Publish semi-annual and annual reports to the FDLE Commissioner, Florida Governor, Florida Legislature, and the public of the various crime trends in the state;
- Collect the number of offenses known to UCR Program contributors for murder, manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, arson, simple assault, domestic violence, and other offenses and related arrest information.³¹

The Florida Incident Based Reporting System (FIBRS) is a statewide database for incident based reporting. FIBRS streamlines several data collection efforts into one system which includes data collections from:

- NIBRS (National Incident Based Reporting System);
- Hate Crimes;
- Cargo Theft;
- Human Trafficking;
- Use-of-Force;
- Law Enforcement Information Exchange (LInX); and
- Police Employee Counts.³²

The University of South Florida recently established its Trafficking in Persons – Risk to Resilience Lab (TIP Lab), which is dedicated to eradicating human trafficking in the Tampa Bay area.³³ The TIP Lab

³⁰ FDLE, *Uniform Crime Report*, <https://www.fdle.state.fl.us/FSAC/Uniform-Crime-Report> (last visited Feb. 8, 2022).

³¹ FDLE, *Uniform Crime Reports Guide Manual* (November 2018), <https://www.fdle.state.fl.us/FSAC/UCR/UCRGuideManual.aspx> (last visited Feb. 4, 2022).

³² FDLE, *Florida Incident-Based Reporting System (FIBRS)*, <https://www.fdle.state.fl.us/UCR/QR/FIBRS> (last visited Feb. 8, 2022).

³³ University of South Florida, *USF Trafficking in Persons – Risk to Resilience Lab*, <https://tiplab.cbcs.usf.edu/index.php> (last visited Feb. 8, 2022).

conducts innovative and interdisciplinary research to address human trafficking issues and trends and shares knowledge and resources with the community through the establishment of a data depository for use by human trafficking researchers.³⁴ Prior to the creation of the TIP Lab, Florida did not have a unified data center for human trafficking.³⁵

Effect of Proposed Changes

CS/CS/CS/HB 1439 creates s. 1004.343, F.S., to create the Statewide Data Repository for Anonymous Human Trafficking Data (Repository) to be housed under the University of South Florida Trafficking in Persons – Risk to Resilience Lab (TIP Lab).

The bill requires the Repository to collect anonymous data on human trafficking to: identify trends in the state over time, evaluate the effectiveness of various state initiatives and interventions, and disseminate relevant data to law enforcement agencies, state agencies, and other entities to assist in combatting human trafficking and apprehending and prosecuting persons responsible for conducting human trafficking.

Under the bill, the TIP Lab is responsible for designing, operating, maintaining and protecting the integrity of the Repository and the data collected. The bill requires the TIP Lab to work with the Florida Department of Law Enforcement (FDLE) and other law enforcement partners to launch a no cost, user-friendly reporting system by which reporting entities may make reports.

The bill designates the following agencies and entities as required reporting entities:

- Law enforcement agencies operating with state or local government tax proceeds, including, but not limited to, municipal police departments, county sheriffs, and state attorneys;
- FDLE and any other state agency that holds data related to human trafficking; and
- Service providers and other nongovernmental organizations that serve human trafficking victims and receive state or federal funding to do so.

The bill exempts a required reporting entity that submits relevant data to FDLE through the Uniform Crime Report System (UCR) or through the Florida Incident Based Reporting System (FIBRS). The bill requires FDLE to provide such data to the Repository on a quarterly basis.

A required reporting entity must submit the following data to the Repository:

- The alleged human trafficking offense and description of the prohibited conduct;
- The age, gender, and race or ethnicity of each suspect or defendant;
- The age, gender, and race or ethnicity of the victim;
- The date, time, and location of the alleged offense;
- The type of human trafficking involved, whether for labor or services or commercial sexual activity;
- Any other alleged offense related to the human trafficking offense;
- Information about any victim services referrals provided to the victim, if available; and
- The disposition of the investigation or prosecution.

The bill requires reporting entities in a county with a population of 500,000 or more to begin reporting to the Repository by July 1, 2023. Required reporting entities in a county with a population less than 500,000 must begin reporting to the Repository by July 1, 2024.

The bill is effective upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Provides the act may be cited as the “Human Trafficking Reduction Act.”

³⁴ *Id.*

³⁵ University of South Florida St. Petersburg Campus, *Grand Opening of New Research Lab to Combat Human Trafficking in Florida*, (September 15, 2021), <https://www.stpetersburg.usf.edu/news/2021/grand-opening-human-trafficking-lab.aspx> (last visited Feb. 8, 2022).

Section 2: Creates s. 509.098, F.S., relating to prohibition of hourly rates.

Section 3: Amends s. 796.07, F.S., relating to prohibiting prostitution and related acts.

Section 4: Amends s. 943.0583, F.S., relating to human trafficking victim expunction.

Section 5: Creates s. 1004.343, F.S., relating to Statewide Data Repository for Anonymous Human Trafficking Data.

Section 6: Provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate positive impact on prison beds by creating new felony offenses and increasing penalties for current felony offenses.

The bill requires that a system for reporting anonymous human trafficking data to the Repository be made available by the TIP Lab to required reporting entities at no additional cost to the entity. The bill may have an indeterminate impact on state government due to an increased workload for the TIP Lab.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill requires that a system for reporting anonymous human trafficking data to the Repository be made available by the TIP Lab to required reporting entities at no additional cost to the entity. As such, the bill should not have a fiscal impact on local government entities required to report data to the Repository.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate fiscal impact on the private sector by prohibiting hourly rates for public lodging establishments. Those consumers who currently rent public lodging establishments by the hour may have to pay the daily rate, which may increase revenues for public lodging establishments, but cost more for consumers.

D. FISCAL COMMENTS:

The bill requires the TIP LAB to house and operate the Repository, but does not address how the Repository will be funded. As such, the fiscal impact to the TIP Lab is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2022, the Criminal Justice & Public Safety Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill as it:

- Included a definition of the term “vacation rental” in s. 509.098, F.S.;
- Deleted a requirement for case numbers to be reported to the Repository; and
- Made other technical revisions for clarity.

On February 1, 2022, the Commerce Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed a provision to require operators of public lodging establishments to obtain proof of a guest’s identification upon occupancy.
- Removed references to “vacation rentals,” which are already included in the definition of “public lodging establishment.”

On February 8, 2022, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment aligned the penalties for purchasing prostitution with the penalties for soliciting another person to commit prostitution by requiring a person convicted for purchasing prostitution to be subject to additional penalties including:

- Being required to complete 100 hours of community service;
- Being required to attend an offender education program specific to human trafficking and prostitution, if such a program is offered in the circuit in which the offender is sentenced;
- A 10-day mandatory minimum jail sentence for a second or subsequent violation;
- Vehicle impoundment if the offender used a car to commit the violation;
- Inclusion of the offender’s name on the Soliciting for Prostitution Public Database; and
- A \$5,000 civil fine.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.