

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 Fiscal Policy

BILL: SPB 7064

INTRODUCER: For consideration by the Fiscal Policy Committee

SUBJECT: Human Trafficking

DATE: April 19, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Davis</u>	<u>Yeatman</u>	<u>FP</u>	<u>Pre-meeting</u>

I. Summary:

SPB 7064 establishes a new civil cause of action for a victim of human trafficking. The victim may recover damages and costs against an adult theatre, or its owner, operator, or manager who knowingly allows a human trafficking victim to work, perform, or dance at the adult theatre. In broad, general terms, an adult theatre is an enclosure or business used for presenting performances characterized by sexual activities for observation by its patrons, and which purports to limit admission to adults.

To comply with the statute of limitations, a lawsuit must be brought in circuit court within the same time period that is required for intentional torts based on abuse or sexual battery offenses on victims younger than 16 years. A victim who prevails in the lawsuit may recover economic and noneconomic damages, punitive damages, reasonable attorney fees, and costs.

If an adult theatre “knowingly” fails to obtain and maintain certain age verification documents of its employees and independent contractors, as required by the child labor laws contained in ch. 450, F.S., the current violation is a first degree misdemeanor. Under the bill, that penalty is increased to a third degree felony and the requirement that the violation be done “knowingly” is removed.

The bill amends the educational program penalties that must be imposed upon someone who is convicted of soliciting or enticing another to commit prostitution. In addition to other penalties, the offender must pay for and attend an educational program established by a judicial circuit that teaches the relationship between the demand for commercial sex and human trafficking and its impact on victims, if the program exists in the judicial circuit.

The statutes governing law enforcement officer training are amended to require that each certified law enforcement officer complete 4 hours of training in identifying and investigating human trafficking as part of the basic recruit training or the additional required training.

Finally, the bill establishes the state's unified Statewide Data Repository for Anonymous Human Trafficking Data at the University of South Florida Trafficking in Persons - Risk to Resilience Lab. The human trafficking data, which must be submitted by law enforcement agencies and other entities, will be used to aid in combatting human trafficking, prosecuting those engaged in human trafficking, and assisting victims of human trafficking. The bill takes effect July 1, 2023.

II. Present Situation:

Human Trafficking

Human trafficking is defined in s. 787.06(2)(d), F.S., as the “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining another person for the purpose of exploitation of that person.”

According to the Florida Department of Law Enforcement, human trafficking is the world's fastest growing criminal industry and ranks second in size only behind the international illegal drug trade. Unfortunately, the financial profits derived from human trafficking exceed the cumulative profits of several international corporations.¹

The Florida Alliance to End Human Trafficking states that Florida is believed to be the third largest center for human trafficking cases in the United States. The average minor is only 12 to 14 years old when he or she is first trafficked for commercial sex purposes although some trafficking victims have been as young as 9 years old.²

Legislative Intent and Penalties

Section 787.06(1)(a)-(d), F.S., contain the Legislature's “findings” on human trafficking. The provisions state that human trafficking is a form of modern-day slavery whose victims include young children, teenagers, and adults who are trafficked internationally and domestically. The traffickers subject the victims to different forms of force, fraud, or coercion to instill fear in them and keep them enslaved for sexual exploitation or forced labor. The findings further state that it is the intent of the Legislature to penalize the human traffickers for their crimes while the victims are protected and assisted by the state.

The penalties for anyone who knowingly, or in a reckless disregard of the facts, engages or attempts to engage in human trafficking, or benefits financially from human trafficking are set forth in s. 787.06(3) and (4), F.S.³ Of the 13 criminal offenses listed, 10 are punishable as first degree felonies, two are punishable as life felonies, and one is punishable as a second degree felony. If a person causes great bodily harm, permanent injury, or permanent disfigurement to

¹ Florida Department of Law Enforcement, *Identify and Investigate Human Trafficking*, [http://www.fdle.state.fl.us/Media/BPDTraining/IDHumanTrafficking/index.html#/.](http://www.fdle.state.fl.us/Media/BPDTraining/IDHumanTrafficking/index.html#/)

² Human Trafficking Courts, *Human Trafficking in Florida: Facts, Statistics, Shelters and Prevention Organizations*, [http://www.fdle.state.fl.us/Media/BPDTraining/IDHumanTrafficking/index.html#/.](http://www.fdle.state.fl.us/Media/BPDTraining/IDHumanTrafficking/index.html#/)

³ Section 787.06(4)(a), F.S., provides that a parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of the minor or attempts to do so, with knowledge or in reckless disregard of the fact that the minor will be subject to human trafficking commits a life felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

another person during the commission of an offense, the degree of the offense is reclassified and a felony of the second degree becomes a felony of the first degree and a felony of the first degree is reclassified as a life felony.⁴

In a prosecution for human trafficking, a defendant's ignorance of a victim's age, a victim's misrepresentation of his or her age, or a defendant's bona fide belief of a victim's age cannot be raised as a defense.⁵ A person who is convicted of human trafficking for commercial sexual activity must register as a sexual offender.⁶

Civil Causes of Action for Human Trafficking

Federal

A victim of human trafficking may sue his or her trafficker for monetary damages in federal court under 18 U.S.C. s. 1595. The victim may sue for actual damages, punitive damages, reasonable attorney fees, and other litigation costs reasonably incurred.⁷ For an action to be maintained under this law, it must be initiated no later than 10 years after the cause of action arose or 10 years after the victim reaches the age of 18 years, if the victim was a minor at the time of the alleged offence.⁸

State

Victims of human trafficking also have a state statutory cause of action under ch. 772, F.S., a chapter that provides civil remedies for criminal practices.⁹

Section 772.104, F.S., provides a cause of action for any person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of s. 772.103, F.S., due to human trafficking. The injured person is entitled to recover from the violator, threefold the amount gained from the human trafficking, or a minimum of \$200, and reasonable attorney fees and court costs. However, no punitive damages may be awarded and the defendant is entitled to recover attorney fees and costs if the claim was unsupported. Pursuant to s. 772.17, F.S., a civil action brought under this statute must be brought within 5 years after the violation terminates or the cause of action accrues.

⁴ Section 787.06(8), F.S.

⁵ Section 787.06(9), F.S.

⁶ Section 943.0435, F.S.

⁷ JDSupra, *Legal Remedies for Sex Trafficking Victims*, (Jan. 27, 2023) <https://www.jdsupra.com/legalnews/legal-remedies-for-sex-trafficking-5286170/>; See also Congress.Gov, H.R.2620 – Trafficking Victims Protection Reauthorization Act of 2003, <https://www.congress.gov/bill/108th-congress/house-bill/2620>.

⁸ 18 U.S.C. s. 1595(2)(c).

⁹ Section 772.103, F.S., makes it unlawful for any person:

- (1) 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.
- (2) 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.
- (3) Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity or the collection of an unlawful debt.
- (4) To conspire or endeavor to violate any of the provisions of subsection (1), subsection (2), or subsection (3).

Under section 796.09(1), F.S., a person has a cause of action for compensatory and punitive damages against a person who coerced that person into prostitution or coerces that person to remain in prostitution, or uses coercion to collect or receive any part of that person's earnings derived from prostitution.

Adult Theater Age Verification Documents

An adult theater is defined in s. 847.001(2)(b), F.S., to mean:

an enclosed building or an enclosed space within a building used for presenting either films, live plays, dances, or other performances that are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults, or any business that features a person who engages in specific sexual activities for observation by a patron, and which restricts or purports to restrict admission to only adults.

An adult theater is required to obtain proof of the identity and age of each of its employees or independent contractors and verify the validity of the identification and age verification document with the issuer before beginning employment or providing services as an independent contractor. According to s. 450.045(3)(a), F.S., this is required to provide the Department of Business and Professional Regulation and law enforcement agencies the means to effectively identify, investigate, and arrest persons who engage in human trafficking.

Pursuant to s. 450.045(3)(b), F.S., the adult theater must obtain and keep on record a photocopy of the person's driver license or state or federal government-issued photo identification card, along with a record of the verification of the validity of the identification and age verification document with the issuer. This information must be maintained during the entire period of employment or business relationship with the independent contractor and for at least 3 years after the employee or independent contractor ceases employment or the provision of services.

If an adult theater owner, operator, or manager knowingly violates these requirements, he or she commits a first degree misdemeanor, which is punishable by imprisonment of no more than 1 year or a fine that does not exceed \$1,000.

Law Enforcement Officer Training Requirements

Section 943.13, F.S., requires each law enforcement officer to complete a commission-approved basic recruit training program, unless he or she meets an exemption provided in statute. In addition, and pursuant to s. 943.17297, F.S., each certified law enforcement officer must successfully complete 4 hours of training in identifying and investigating human trafficking within 1 year after beginning employment.

III. Effect of Proposed Changes:

Civil Cause of Action for a Human Trafficking Victim, Section 3 (s. 787.061, F.S.)

Findings

The Legislature finds that it is necessary to create a civil cause of action for human trafficking victims in order to carry out the intent of the Legislature as expressed previously in s. 787.06(1)(d), F.S. That section details the Legislature's desire to punish human traffickers for their illegal conduct and ensure that victims be protected and assisted by the state and its agencies and helped to access social services and benefits.

Definitions

"Human trafficking" means transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining another person for the purpose of exploitation of that person.

A "victim of human trafficking" means a person subjected to coercion, as defined in existing s. 787.06(2), F.S.,¹⁰ or by any other means, for the purpose of being used in human trafficking; a child under 18 years of age subjected to human trafficking; or an individual subjected to human trafficking as defined by federal law.

Cause of Action

The bill establishes a civil cause of action for a victim of human trafficking to recover damages and costs against an adult theatre, or its owner, operator, or manager who knowingly allows a victim to work, perform, or dance at the adult theatre. The action may be brought in any circuit court of the state.

Recoverable Damages

Under the bill, a victim may recover economic and noneconomic damages; punitive damages, as provided in ss. 768.72, 768.725, and 768.73, F.S.; and reasonable attorney fees and costs.

Under the bill, economic damages include, but are not limited to:

- Past and future medical and mental health expenses;

¹⁰ Coercion is defined in s. 787.06(2)(a), F.S., to mean:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03 to any person for the purpose of exploitation of that person.

- 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 nonfinancial losses that would not have occurred but for the victimization, and include:

- Pain and suffering;
- Inconvenience;
- Physical impairment;
- Mental anguish;
- Disfigurement;
- Loss of capacity for enjoyment of life; and
- Other nonfinancial losses.

The bill provides that the civil remedies provided for in this section do not preempt any other remedy or cause of action provided by law, but that a victim may not recover under both this section and existing s. 772.104(2), F.S.¹¹

Prohibited Recovery

The bill states that, if the factfinder determines that a parent or legal guardian knowingly trafficked the victim, facilitated the trafficking, or otherwise participated in the human trafficking of the victim, the court may not allow the parent or legal guardian to receive any distribution of damages awarded under this section.

Consolidation

In an action brought under this section, a court is given the specific authority to consolidate civil actions for the same defendant for the purpose of case resolution and aggregate jurisdiction.

Statute of Limitations, Section 1

The statute of limitations provision contains cross-references to s. 95.11(7) or (9), F.S., as applicable to govern an action brought under this section. Section 95.11(7), F.S., applies to limitations for intentional torts based on abuse and s. 95.11(9), F.S. addresses specified offenses on victims under age 16.

Those statutes are amended to provide that an action under this section may be brought:

¹¹ Section 772.104(1) and (2), F.S. states:

(1) Any person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of the provisions of s. 772.103 shall have a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of \$200, and reasonable attorney's fees and court costs in the trial and appellate courts.

(2) As an alternative to recovery under subsection (1), any person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of the provisions of s. 772.103 due to sex trafficking or human trafficking shall have a cause of action for threefold the amount gained from the sex trafficking or human trafficking and in any such action is entitled to minimum damages in the amount of \$200 and reasonable attorney's fees and court costs in the trial and appellate courts.

- Within 7 years after the victim reaches the age of majority;
- Within 4 years after the victim leaves the abuser;
- Within 4 years from the time of discovery by the victim of both the injury and the causal relationship between the injury and abuse, whichever occurs later; or
- For victims that were under the age of 16 at the time of the trafficking, at any time.

Adult Theatre Criminal Provisions, Section 2 (s. 450.045, F.S.)

The bill amends s. 450.045, F.S., to increase the penalty for the failure of an owner, operator, or manager of an adult theater to comply with the proof of age and identify verification requirements. The penalty is increased from the penalties for a first degree misdemeanor to the penalties for a third degree felony, and language is revised to no longer require that the violation be done “knowingly.” The bill does not rank this offense, and therefore by default, it is ranked as a level 1 offense on the Criminal Punishment Code Offense Severity Ranking Chart.

A third degree felony is punishable by a term of imprisonment not to exceed 5 years and a fine not to exceed \$5,000. Language is also added to the penalty provisions to permit sentencing under s. 775.084, F.S., which addresses violent career criminals, habitual felony offenders, and habitual violent felony offenders.

Additional Punishment Provisions for Prostitution-Related Convictions, Section 4 (s. 796.07, F.S.)

The bill amends s. 796.07, F.S., to require that an offender who is convicted of soliciting another person to commit prostitution, in addition to any other penalty imposed, pay for and attend an educational program, if one exists in the judicial circuit in which the offender is sentenced, that provides education on the following:

- The relationship between demand for commercial sex and human trafficking.
- The impact of human trafficking on victims.
- Coercion, consent, and sexual violence.
- The health and legal consequences of commercial sex.
- The negative impact of commercial sex on prostituted persons and the community.
- The reasons and motivations for engaging in prostitution.

The bill authorizes a judicial circuit to establish a program and allows a program to be offered by a faith-based provider.

Law Enforcement Training, Section 5 (s. 943.17297, F.S.)

The bill amends s. 943.17297, F.S., to require that each certified law enforcement officer successfully complete 4 hours of training in identifying and investigating human trafficking as part of the basic recruit training of the officer as required pursuant to s. 943.13(9), F.S., or additional training required in s. 943.131(4), F.S. The training must be developed by the Criminal Justice Standards and Training Commission in consultation with the Department of Legal Affairs and the Statewide Council on Human Trafficking.

Statewide Data Repository for Anonymous Human Trafficking Data, Section 6

The bill creates s. 1004.343, F.S., to establish the Statewide Data Repository for Anonymous Human Trafficking Data within the University of South Florida's (USF) Trafficking in Persons – Risk to Resilience Lab.

Law enforcement agencies and other entities and organizations are required to submit data to the repository. This data will then be used to develop data-driven approaches to combatting human trafficking, prosecuting those engaged in human trafficking, and assisting victims of human trafficking. Beginning July 1, 2024, and each year after, the Lab must submit an annual report and analysis of its findings to the Governor, the Attorney General, the President of the Senate, and the Speaker of the House of Representatives.

This section pertaining to the University of South Florida Trafficking in Persons – Risk to Resilience Lab will be repealed July 1, 2026, unless it is reviewed and reenacted by the Legislature before that date.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill defines “victim of human trafficking” to include an “individual subjected to human trafficking as defined by federal law.” Because the Legislature may not delegate its legislative power to the federal government, the bill will not likely be interpreted to incorporate future changes to those federal definitions.¹²

¹² See *Eastern Airlines, Inc. v. Dept. of Revenue*, 455 So. 2d 311, 315-16 (Fla. 1984).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

By increasing the adult theater operation penalties from a first degree misdemeanor to a third degree felony, the bill may result in more jail and prison admissions.

The bill may also have an indeterminate impact on state expenditures due to costs required to establish an educational program pertaining to human trafficking and commercial sex. Some of these costs, however, may be offset by offenders having to pay for their attendance in the educational program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 95.11, 450.045, 796.07, and 943.17297.

This bill creates the following sections of the Florida Statutes: 787.061 and 1004.343.

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.