

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 305 Offenses Involving Children
SPONSOR(S): Judiciary Committee, Criminal Justice Subcommittee, Baker
TIED BILLS: IDEN./SIM. BILLS: SB 312

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 0 N, As CS	Butcher	Hall
2) Judiciary Committee	20 Y, 0 N	Butcher	Kramer

SUMMARY ANALYSIS

Hearsay is a statement, other than one made by the declarant while testifying at a trial or hearing, offered in evidence to prove the truth of the matter asserted. Although hearsay is generally inadmissible, s. 90.803, F.S., contains a variety of hearsay exceptions. Section 90.803(23), F.S., specifies that unless the source of information or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of *16 or less* is admissible in evidence in any civil or criminal proceeding when describing any act relating to child abuse or neglect, child sexual abuse, or unlawful sexual acts performed in the presence of, with, by, or on the child if:

- The court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient safeguards of reliability; and
- The child testifies or is unavailable as a witness, provided that there is other corroborative evidence of the abuse or offense.

CS/HB 305 amends s. 90.803(23), F.S., to increase the physical, mental, emotional, or developmental age of a child to which the hearsay exception applies from 16 years of age or less to *17 years of age or less*.

Sections 775.21 and 943.0435, F.S., require any person convicted or adjudicated delinquent of a specified sexual offense and who meets other statutory criteria to be designated as a sexual predator or sexual offender. Each designation requires an offender to comply with similar registration and reregistration requirements, however, sexual predators may be required to reregister more frequently. The Florida Sexual Predators Act, s. 775.21, F.S., classifies specified offenses as “single strike” offenses and other specified offenses as “second strike” offenses for purposes of sexual predator designation. A single strike offense requires an offender to be designated as a sexual predator upon conviction for a specified capital, life, or first-degree felony sexual offense, or any attempt thereof. A second strike offense requires an offender to have a specified prior sexual offense conviction before a conviction for a subsequent sexual offense requires the offender to be designated as a sexual predator.

Currently, a single conviction for ss. 787.06(3)(f) or (g), F.S., generally relating to human trafficking of a minor for commercial sexual activity, does not require an offender to be designated as a sexual predator. Instead, such a conviction requires an offender to register as a sexual offender or may require him or her to be designated as a sexual predator, but only if the offender also has a specified *prior* sexual offense conviction.

CS/HB 305 amends s. 775.21, F.S., to add ss. 787.06(3)(f) and (g), F.S., relating to human trafficking for commercial sexual activity where the victim is a minor, to the list of offenses for which a single conviction requires an offender to be designated as a sexual predator.

The bill may increase the number of offenders who are designated as a sexual predator and as such, may increase the workload of sheriff offices tasked with monitoring and enforcing sexual offender and sexual predator reporting requirements. However, any additional costs should be absorbed within existing resources.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Child Hearsay Exception

Hearsay is a statement, other than one made by the declarant while testifying at a trial or hearing, offered in evidence to prove the truth of the matter asserted.¹ Although hearsay is generally inadmissible, s. 90.803, F.S., contains a variety of hearsay exceptions. Among these exceptions, s. 90.803(23), F.S., specifies that unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 16 or less² is admissible in evidence in any civil or criminal proceeding when describing:

- Any act of child abuse or neglect;
- Any act of sexual abuse against a child;
- An offense of child abuse or aggravated child abuse; or
- Any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child.³

A child hearsay statement is admissible in evidence if:

- A court conducts a hearing outside the presence of the jury and finds that the time, content, and circumstances of the statement provide sufficient safeguards of reliability;⁴ and
- The child either:
 - Testifies; or
 - Is unavailable as a witness, provided that there is other corroborative evidence of the abuse or offense. Unavailability may include a finding by the court that the child's participation in the trial or proceeding would result in a substantial likelihood of severe emotional or mental harm, in addition to findings pursuant to s. 90.804(1), F.S.⁵

In a criminal action, the defendant must be notified no later than 10 days before trial that a statement which qualifies as a hearsay exception pursuant to s. 90.803(23), F.S., will be offered as evidence at trial. The notice must include a written statement of the content of the child's statement, the time at which the statement was made, the circumstances surrounding the statement which indicate its

¹ S. 90.801(1)(b), F.S. A declarant is a person who makes a statement. S. 90.801(1)(a), F.S.

² In *State v. Contreras*, the Florida Supreme Court (FSC) explained, "The only age requirement is that the statement being admitted as hearsay [under s. 90.803(23), F.S.] must have been made by a victim [sixteen] years or less in age." 979 So. 2d 896 (Fla. 2008). This age requirement relates to the child's age when he or she made the out of court statement, not the child's age at the time of trial. The FSC decided *Contreras* before the Legislature amended the applicable child hearsay age from 11 to 16 years old. That change has not affected the court's analysis.

³ S. 90.803(23)(a), F.S.

⁴ In making its determination, the court may consider the mental and physical age and maturity of the child, the nature and duration of the abuse or offense, the relationship of the child to the offender, the reliability of the assertion, the reliability of the child victim, and any other factor deemed appropriate. S. 90.803(23)(a)1., F.S.

⁵ Section. 90.804(1), F.S., specifies that "unavailability as a witness" means that the declarant:

- Is exempted by a ruling of a court on the ground of privilege from testifying concerning the subject matter of the declarant's statement;
- Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;
- Has suffered a lack of memory of the subject matter of his or her statement so as to destroy the declarant's effectiveness as a witness during the trial;
- Is unable to be present or to testify at the hearing because of death or because of then-existing physical or mental illness or infirmity; or
- Is absent from the hearing, and the proponent of a statement has been unable to procure the declarant's attendance or testimony by process or other reasonable means.

However, a declarant is not unavailable as a witness if such exemption, refusal, claim of lack of memory, inability to be present, or absence is due to the procurement or wrongdoing of the party who is the proponent of his or her statement in preventing the witness from attending or testifying.

reliability, and such other particulars as necessary to provide full disclosure of the statement. The court is also required to make specific findings of fact, on the record, as to the basis for its ruling on the admissibility of child hearsay.^{6,7}

Confrontation Clause

The Sixth Amendment's Confrontation Clause, which is binding on the States through the Fourteenth Amendment, provides: "In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him."⁸ Evidence that qualifies as a hearsay exception must still satisfy the Sixth Amendment right to confrontation. In *Crawford v. Washington*,⁹ the United States Supreme Court (Supreme Court) explained that "witnesses," under the Confrontation Clause, are those "who bear testimony," and defined "testimony" as "a solemn declaration or affirmation made for the purpose of establishing or proving some fact." *Crawford* held that the admission of testimonial hearsay complied with the Confrontation Clause only if the declarant testified at trial or was unavailable and the accused had an opportunity for cross-examination. Although the Court declined to specifically define the term "testimonial hearsay," it held that statements made in response to police interrogations were included within the definition and indicated that prior testimony, affidavits, depositions and confessions were also included.¹⁰

As the Florida Supreme Court explained in *State v. Contreras*, "An out-of-court statement is not admissible merely because it meets the statutory definition of child victim hearsay."¹¹ The State must still satisfy other guarantees of the Confrontation Clause, which differs from the kind of protection that is afforded by state evidence rules governing the admission of hearsay.

Human Trafficking

Human trafficking is modern day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining of another person for the purpose of exploiting that person.¹² A person may not knowingly, or in reckless disregard of the facts, engage in human trafficking, attempt to engage in human trafficking, or benefit financially by receiving anything of value from participating in a venture that has subjected a person to human trafficking for commercial sexual activity, labor, or services:

- By using coercion;¹³
- With or of a child or person believed to be a child younger than 18;¹⁴ or
- If for commercial sexual activity, with a mentally defective¹⁵ or mentally incapacitated¹⁶ person.¹⁷

Specifically, s. 787.06(3), F.S., in part, prohibits human trafficking:

⁶ S. 90.803(23)(b) and (c), F.S.

⁷ In 2013, CS/CS/HB 1325 amended s. 90.803(23), F.S., by increasing the physical, mental, emotional, or developmental age of a child to which the hearsay exception applies from a child 11 years of age or less to a child 16 years of age or less. Ch. 2013-98, Laws of Fla.

⁸ U.S. Const. amend VI.

⁹ 541 U.S. 36 (2004).

¹⁰ Charles W. Ehrhardt, Constitutional limitations on hearsay rule, 1 Fla. Prac., Evidence § 802.2 (2023 ed.).

¹¹ 979 So. 2d at 902.

¹² S. 787.06(2)(d), F.S.

¹³ Ss. 787.06(3)(a)2., (b), (c)2., (d), (e)2., and (f)2., F.S.

¹⁴ Ss. 787.06(3)(a)1., (c)1., (e)1., (f)1., and (g), F.S.

¹⁵ Mentally defective means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct. S. 794.011(1)(c), F.S.

¹⁶ Mentally incapacitated means 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. S. 794.011(1)(d), F.S.

¹⁷ S. 787.06(3)(g), F.S.

- For commercial sexual activity by the transfer or transport of any child younger than 18 years of age or an adult believed by the person to be a child younger than 18 years of age from outside this state to within this state.¹⁸
- For commercial sexual activity in which any child younger than 18 years of age or an adult believed by the person to be a child younger than 18 years of age, or in which any person who is mentally defective or mentally incapacitated as those terms are defined in s. 794.011(1), F.S., is involved.¹⁹
- Using coercion for commercial sexual activity by the transfer or transport of an adult from outside this state to within this state.²⁰

Florida's Sexual Predator and Sexual Offender Registration Laws

Sections 775.21 and 943.0435, F.S., require registration of any person who has been convicted or adjudicated delinquent of a specified sexual offense and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender. The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. The laws span several different chapters and numerous statutes²¹ and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the Department of Highway Safety and Motor Vehicles, and the Department of Children and Families.

A court must designate a person as a sexual predator if the person:

- Has been convicted of a qualifying capital, life, or first degree felony sexual offense committed on or after October 1, 1993;
- Has been convicted of a qualifying sexual offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sexual offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.²²

A person is classified as a sexual offender if the person:

- Has been convicted of a qualifying sexual offense and has been released on or after October 1, 1997, from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sexual offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the juvenile was 14 years of age or older.²³

Requirements for registration and reregistration are generally similar for sexual predators and sexual offenders, but the frequency of reregistration may differ.²⁴ Registration requirements may also differ based on a special status, e.g., the sexual predator or sexual offender is in the DOC's control or

¹⁸ S. 787.06(3)(f)1., F.S. This conduct is a first degree felony, punishable by imprisonment for a term of years not exceeding life, or as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

¹⁹ S. 787.06(3)(g), F.S. This conduct is punishable as a life felony as provided in s. 775.082(3)(a)6., s. 775.083, or s. 775.084, F.S.

²⁰ S. 787.06(3)(f)2., F.S. This conduct is a first degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

²¹ Ss. 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.

²² S. 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

²³ Ss. 943.0435(1)(h) and 985.4815(1)(h), F.S. Ss. 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the DOC's supervision, also define the term "sexual offender."

²⁴ All sexual predators, sexual offenders convicted for offenses specified in s. 943.0435(14)(b), F.S., and juvenile sexual offenders required to register under s. 943.0435(1)(h)1.d., F.S., for certain offenses must reregister four times per year (on the birth month of the sexual predator or qualifying sexual offender and every third month thereafter). Ss. 775.21(8)(a), 943.0435(14)(b), 944.607(13)(a), and 985.4815(13)(a), F.S. All other sexual offenders are required to reregister two times per year (on the birth month of the qualifying sexual offender and during the sixth month following the sexual offender's birth month). S. 943.0435(14)(a), F.S.

custody, under the DOC's or the DJJ's supervision, or in a residential commitment program under the DJJ.

Sexual predators and sexual offenders are required to report certain information at registration and reregistration, including but not limited to, physical characteristics, relevant sexual offense history, and information on residence, vehicles and vessels owned, and travel. The FDLE, through its agency website, provides a searchable database that includes some of this information.²⁵ Local law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage.

Sexual Predator Designation

The Florida Sexual Predators Act, s. 775.21, F.S., classifies specified offenses as "single strike" offenses and other specified offenses as "second strike" offenses for purposes of sexual predator registration.²⁶

A **single strike** offense requires an offender to be designated as a sexual predator upon conviction for a specified sexual offense, regardless of his or her criminal history.²⁷ These offenses include a capital,²⁸ life, or first-degree felony violation, or any attempt thereof, for:

- Kidnapping under s. 787.01, F.S., or false imprisonment under s. 787.02, F.S., where the victim is a minor;
- Sexual battery under s. 794.011, F.S.;
- Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age under s. 800.04, F.S.; and
- Selling or buying of minors under s. 847.0145, F.S.

A **second strike** offense requires a specified *prior* sexual offense conviction, which includes a plea of guilty or nolo contendere, regardless of whether adjudication is withheld, before a conviction for a subsequent sexual offense requires the offender to be designated as a sexual predator.²⁹ These offenses include any felony violation, or attempt thereof, for:

- Sexual misconduct with an individual with a developmental disability under s. 393.135(2), F.S.;
- Sexual misconduct with a patient under s. 394.4593(2), F.S.;
- Kidnapping under s. 787.01, F.S., false imprisonment under s. 787.02, F.S., or luring or enticing a child under 787.025(2)(c), F.S., where the victim is a minor;
- *Human trafficking* under ss. 787.06(3)(b),(d),(f),(g), and former s. 787.06(3)(h), F.S.;
- Sexual battery under s. 794.011, F.S., excluding s. 794.011(10), F.S.;
- Unlawful activity with certain minors under s. 794.05, F.S.;
- Procuring a person under the age of 18 for prostitution under former s. 796.03, F.S.;
- Selling or buying of minors into sex trafficking or prostitution under former s. 796.035, F.S.;
- Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age under s. 800.04, F.S.;
- Video voyeurism under s. 810.145(8)(b), F.S.;³⁰
- Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person under s. 825.1025, F.S.;

²⁵ The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at an institute of higher education. See <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited Jan. 8, 2024).

²⁶ FDLE has used the terms "Single Strike" and "Second Strike" as far back as 2001. See <https://www.fdle.state.fl.us/OGC/Documents/Legal-Bulletins/01-02-2000-Guidelines-to-Florida-Sex-Offender-Laws.aspx> (last visited Jan. 8, 2024).

²⁷ S. 775.21(4)(a)1.a., F.S.

²⁸ Punishable by death or life imprisonment as provided in ss. 775.082 and 921.141, F.S.

²⁹ S. 775.21(4)(a)1.b., F.S.

³⁰ A violation of s. 810.145(8)(b), F.S., cannot be used as the predicate offense to designate a person as a sexual predator, however, a person with a different specified prior sexual offense conviction may be designated as a sexual predator upon a subsequent conviction for video voyeurism under s. 810.145(8)(b), F.S.

- Sexual performance by a child under s. 827.071, F.S.;
- Computer pornography under s. 847.0135, F.S., excluding s. 847.0135(6), F.S.;
- Selling or buying of minors under s. 847.0145, F.S.;
- Racketeering under s. 895.03, F.S., where the court makes a written finding that the racketeering activity involved at least one specified sexual offense, or at least one specified offense with sexual intent or motive;
- Sexual misconduct with a forensic client under s. 916.1075(2), F.S.;
- Sexual misconduct with a juvenile offender under s. 985.701(1), F.S.; and
- Prohibition of certain acts in connection with minors and obscenity under s. 847.0133, F.S.³¹

Sections 787.06(3)(f) and (g), F.S., which generally relate to human trafficking of a minor for commercial sexual activity, do not require an offender to be designated as a sexual predator based solely on a single conviction for either offense. Instead, a single conviction for either offense requires an offender to register as a sexual *offender* under s. 943.0435(1)(h)1.a.(I), F.S, and may require an offender to be designated as a sexual predator, but only if he or she has a specified *prior* sexual offense conviction. As such, these offenses are the only punishable by life (PBL) offenses³² under s. 775.21(4), F.S., that do not automatically designate a person as a sexual predator upon conviction.³³

Effect of Proposed Changes

CS/HB 305 amends s. 90.803(23), F.S., to increase the physical, mental, emotional, or developmental age of a child to which the child hearsay exception applies from 16 years of age or less to 17 years of age or less. As such, under the bill, an out of court statement made by a child victim with a physical, mental, emotional, or developmental age of 17 or less is admissible in a civil or criminal proceeding if the statement otherwise satisfies the requirements of s. 90.803(23), F.S. Otherwise, the bill retains all other current requirements and procedural safeguards that must be satisfied prior to the admission of a child's out of court statement in a court proceeding.

Additionally, the bill requires a person convicted of a single violation of either of the following offenses, *where the victim is a minor*, to automatically be designated as a sexual predator, regardless of his or her criminal history:

- Section 787.06(3)(f), F.S., prohibiting human trafficking for commercial sexual activity with a child younger than 18 years of age, or an adult believed by the person to be a child younger than 18 years of age, whom the offender transfers or transports into Florida from outside the state.
- Section 787.06(3)(g), F.S., prohibiting human trafficking for commercial sexual activity with a child younger than 18 years of age, or an adult believed by the person to be a child younger than 18 years of age, or any person who is mentally defective or mentally incapacitated, regardless of whether the offender transfers or transports the victims into Florida from outside the state.

Under the bill, a conviction for human trafficking under s. 787.06(3)(f) or (g), F.S., can still:

- Serve as a predicate offense for sexual predator designation, if the conviction occurred prior to the effective date of the bill, and the offender commits another specified sexual offense; or
- Require the offender to be designated as a sexual predator upon conviction, if he or she committed the offense prior the effective date of the bill, and he or she has a prior conviction for another predicate offense.

The bill provides an effective date of July 1, 2024.

³¹ The prohibition of certain acts in connection with minors and obscenity under s. 847.0133, F.S., can only be used as a *predicate* offense for the purposes of sexual predator designation. A person convicted of violating s. 847.0133, F.S., cannot be designated as a sexual predator because of that conviction, regardless of his or her criminal history.

³² PBL offenses include offenses for which a sentencing court *may* impose life imprisonment, like s. 787.01(2), F.S., and offenses for which a sentencing court *must* impose life imprisonment, like s. 787.01(3)(a), F.S.

³³ Ss. 787.01, 794.011(2)(a),(b), 794.011(2)(b), 794.011(3)(a),(b), 794.011(4)(a),(d), 794.011(8)(b),(c), and 800.04(5)(b), F.S., are each either a PBL or capital offense.

B. SECTION DIRECTORY:

Section 1: Amends s. 90.803, F.S., relating to hearsay exceptions; availability of declarant immaterial.

Section 2: Amends s. 775.21, F.S., relating to The Florida Sexual Predators Act.

Section 3: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may increase the number of offenders who are designated as a sexual predator and as such, may increase the workload of sheriff offices tasked with monitoring and enforcing sexual offender and sexual predator reporting and registration requirements. However, additional costs will likely be absorbed within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 12, 2023, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Specified that, in order for a human trafficking for commercial sexual activity conviction under s. 787.06(3)(f) or (g), F.S., to require an offender to be automatically designated as a sexual predator, the victim of the offense must be a minor.
- Ensured that a human trafficking conviction for a violation of s. 787.06(3)(b), (d), (g), (f), F.S., can still:
 - Serve as a predicate offense for sexual predator designation, if the conviction occurred prior to the effective date of the bill, and the offender commits another specified sexual offense; or
 - Require the offender to be designated as a sexual predator upon conviction, if he or she committed the offense prior the effective date of the bill, and he or she has a prior conviction for another predicate offense.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.