

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 545 Human Trafficking

**SPONSOR(S):** Criminal Justice Subcommittee; Spano and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 784

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Aziz	White
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Section 787.06, F.S., Florida's human trafficking statute, defines human trafficking as the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person. Human trafficking in Florida proliferates through illegal industries such as prostitution. In recent years, the Legislature has overhauled Florida's human trafficking laws to increase penalties for solicitation and removed offenses that penalize minors for the commission of prostitution in order to reflect that minors are unable to consent to prostitution and should be viewed as victims of human trafficking. Despite these changes, 39 minors were arrested for prostitution in the past year.

The bill removes persons under the age of 18 from being prosecuted for prostitution. The bill makes correlating changes in ch. 39, F.S., relating to the definition of sexual abuse of a child concerning dependency, to reflect that sexually exploiting a child in prostitution should be viewed as human trafficking. This ensures that children involved in prostitution are viewed as victims, not culprits.

The bill also:

- Adds faith-based programs on the negative effects of prostitution and human trafficking to the educational programs that a person convicted of soliciting prostitution must attend if such programs exist in their respective judicial district;
- Increases the penalties for knowingly renting space to be used for prostitution;
- Reclassifies an offense of s. 796.07(2)(a), F.S., if the place, structure, building, or conveyance that is owned, established, maintained, or operated for prostitution is a massage establishment required to be licensed under s. 480.043, F.S., and adds such reclassified offense to the list of offenses that disqualify applicants from a massage therapist or massage establishment license;
- Adds human trafficking as a qualifying felony for first degree murder in the commission of a felony;
- Clarifies the offense of branding a victim of human trafficking;
- Reclassifies an offense in s. 787.06, F.S., if the victim suffers great bodily harm, permanent disability, or permanent disfigurement; and
- Adds racketeering, s. 895.03, F.S., to the qualifying offenses for a sexual predator or sexual offender if a judge makes written findings that racketeering activity involved at least one sexual offense included in the definition of sexual predator or sexual offender.

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, the bill may have a positive prison bed impact in that it increases the number of people subject to sex offender registration requirements and reclassifies existing felony offenses.

The bill is effective October 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, teenagers, men, and women, who are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.<sup>1</sup> The International Labor Organization (ILO), the United Nations agency charged with addressing labor standards, employment, and social protection issues, estimates that as many as 27 million adults and children are in forced labor, bonded labor, and commercial sexual servitude at any given time.<sup>2</sup> The federal government has estimated that the number of persons trafficked into the United States each year ranges from 14,500-17,500.<sup>3</sup>

It is estimated that as many as 300,000 American youth are currently at risk of becoming victims of commercial sexual exploitation.<sup>4</sup> The majority of American victims of commercial sexual exploitation tend to be runaway youth living on the streets, and generally come from homes where they have been abused, or from families that have abandoned them. These children often become involved in prostitution as a way to support themselves financially.<sup>5</sup> The average age at which girls first become victims of prostitution is 12-14; for boys and transgender youth it is 11-13.<sup>6</sup>

Third party or pimp-controlled commercial sexual exploitation of children is linked to escort and massage services, private dancing, drinking and photographic clubs, major sporting and recreational events, major cultural events, conventions, and tourist destinations. About one-fifth of these children become involved in nationally organized crime networks and are trafficked nationally. They are transported around the United States by a variety of means - cars, buses, vans, trucks or planes - and are often provided counterfeit identification to use in the event of arrest.

Survivors of human trafficking often face both criminalization and stigmatization. Trafficked persons are not always recognized or treated as victims by law enforcement and prosecutors. Despite being victims, individuals who are trafficked are often arrested and convicted of prostitution and other related offenses, and may plead guilty not understanding the consequences. Multiple arrests, incarceration, police violence, deportation, employment, and housing discrimination may result.<sup>7</sup>

##### **Prostitution**

Human trafficking in Florida proliferates through illegal industries such as prostitution.<sup>8</sup> This illegal industry is thriving because of the demand of men soliciting prostitution.<sup>9</sup> Chapter 796, F.S., defines prostitution as “the giving or receiving of the body for sexual activity for hire but excludes sexual activity

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<sup>1</sup> U.S. Department of Health and Human Services, Administration for Children and Families, *About Human Trafficking*, <http://www.acf.hhs.gov/trafficking/about/index.html#> (last visited on Nov. 11, 2015).

<sup>2</sup> See U.S. Department of State, *The 2013 Trafficking in Persons (TIP) Report*, June 2013, <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm> (last visited on Nov. 11, 2015).

<sup>3</sup> Sonide Simon, *Human Trafficking and Florida Law Enforcement*, Florida Criminal Justice Executive Institute, pg. 2, March 2008, <http://www.fdle.state.fl.us/Content/getdoc/e77c75b7-e66b-40cd-ad6e-c7f21953b67a/Human-Trafficking.aspx> (last visited on Nov. 22, 2015).

<sup>4</sup> *OJP Fact Sheet*, Office of Justice Programs, U.S. Department of Justice, December 2011, [http://ojp.gov/newsroom/factsheets/ojpfs\\_humantrafficking.html](http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html) (last visited Nov. 22, 2015).

<sup>5</sup> Tamar R. Birkhead, *The "Youngest Profession": Consent, Autonomy, and Prostituted Children*, 88 WASH. U.L. REV. 1055, 1092, n193 (2011).

<sup>6</sup> *Id.*

<sup>7</sup> Melissa Broudo and Sienna Baskin, *Vacating Criminal Convictions For Trafficked Persons: A Legal Memorandum for Advocates and Legislators*. Urban Justice Center. The Sex Workers Project, April 3, 2012, <http://www.sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf> (last visited on Nov. 22, 2015).

<sup>8</sup> Florida State University Center for the Advancement of Human Rights, “Florida Responds to Human Trafficking” Fall 2003 available at [http://www.cahr.fsu.edu/sub\\_category/floridarespondstohumantrafficking.pdf](http://www.cahr.fsu.edu/sub_category/floridarespondstohumantrafficking.pdf) (last visited Nov. 23, 2015).

<sup>9</sup> Cheryl George, *Jailing the Johns: The Issue of Demand in Human Sex Trafficking*, 13 FLA. COASTAL L. REV. 293, 299 (2012).

between spouses.”<sup>10</sup> Currently, a person who offers to commit or engage in prostitution, lewdness, or assignation commits a second degree misdemeanor for a first time offense.<sup>11</sup> <sup>12</sup> A second offense is a first degree misdemeanor,<sup>13</sup> and a third or subsequent offense is a third degree felony<sup>14</sup>. Florida law also makes it a misdemeanor to rent any space with knowledge that it will be used for prostitution.<sup>15</sup>

Last session, in order to further thwart human trafficking, the Legislature amended ch. 796, F.S., to increase the penalty for solicitation from a misdemeanor to a third degree felony for subsequent violations, and to add requirements for community service, a minimum sentence of 10 days in jail, and attendance of an educational program about the negative effects of prostitution and human trafficking.<sup>16</sup>

In recent years, the federal government and other states have adopted legislation recognizing that minors cannot consent to prostitution and should be treated as victims. For example, the federal Trafficking Victims Protection Act, recognizes all prostituted minors as victims of sex trafficking.<sup>17</sup> Likewise, Tennessee expanded its human trafficking offenses to include commercial sex acts where the victim is less than 18 years of age.<sup>18</sup> The Texas Supreme Court has stated that “children are the victims, not the perpetrators, of child prostitution. Children do not freely choose a life of prostitution.”<sup>19</sup>

In the same vein, in 2014, legislative intent language was added to ch. 796, F.S., directing the prosecutions of adults who involve minors in prostitution to be prosecuted under other chapters of law as minors are unable to consent to an act of prostitution.<sup>20</sup> Adults who use minors in any act prohibited under ch. 796, F.S., should not be prosecuted under ch. 796, F.S., but should rather be prosecuted under other criminal laws, such as, but not limited to s. 787.06, F.S. (human trafficking), ch. 794, F.S. (sexual battery), ch. 800, F.S. (lewdness and indecent exposure), s. 810.145, F.S. (video voyeurism), ch. 827, F.S. (abuse of children), and ch. 847, F.S. (obscenity).<sup>21</sup> Since ch. 796, F.S., should not be used to prosecute crimes involving minors, the 2014 legislation repealed the following provisions from ch. 796, F.S.:

- Procuring persons under age 18 for prostitution;
- Selling or buying of minors into prostitution; and
- Reclassifying prostitution violations involving minors.<sup>22</sup>

In Florida, 39 minors were arrested for an offense under s. 796.07, F.S., in Fiscal Year 2014-2015.<sup>23</sup>

### Effect of the Bill

The bill amends s. 796.07(2)(e), F.S., to narrow the scope of who may be convicted of engaging in prostitution to persons 18 years of age and older. Thus, the bill ensures that minors cannot be arrested for offering, committing, or engaging in prostitution. The bill also amends s. 39.01, F.S., relating to child dependency process, to reflect that sexually exploiting a child in prostitution should be viewed as human trafficking. This ensures that children involved in prostitution are viewed as victims, not culprits, by the courts and receive services from the Department of Children and Families.

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<sup>10</sup> s. 796.07(1)(a), F.S. “Sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation. . .” s. 796.07(1)(d), F.S.

<sup>11</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

<sup>12</sup> s. 796.07(4), F.S.

<sup>13</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

<sup>14</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

<sup>15</sup> s. 796.06, F.S.

<sup>16</sup> Ch. 2015-145, Laws of Fla.; s. 796.07(2)(f) and (5), F.S.

<sup>17</sup> 22 U.S.C. § 7102(9)(A). See also Cheryl Nelson Butler, *Kids for Sale: Does America Recognize Its Own Sexually Exploited Minors As Victims of Human Trafficking?*, 44 SETON HALL L. REV. 833, 843 (2014).

<sup>18</sup> TENN. CODE ANN. § 39-13-301(4)(A).

<sup>19</sup> *In re B.W.*, 313 S.W.3d 818, 826 (Tex. 2010).

<sup>20</sup> Ch. 2014-160, Laws of Fla.

<sup>21</sup> s. 796.001, F.S.

<sup>22</sup> Ch. 2014-160, Laws of Fla.

<sup>23</sup> Email from Meredith Stanfield, Legislative Affairs Director for Department of Juvenile Justice, on November 12, 2015 (on file with Criminal Justice Subcommittee).

Further, the bill adds faith-based programs on the negative effects of prostitution and human trafficking to the educational programs that a person convicted of soliciting prostitution must attend if such programs exist in their respective judicial district.

Additionally, the bill increases penalties for a violation of s. 796.06, relating to renting space to be used for lewdness, assignation, or prostitution. The bill increases a first violation from a second degree misdemeanor to a first degree misdemeanor and a subsequent violation from a first degree misdemeanor to a third degree felony.

### **Massage Establishments**

Chapter 480, F.S., entitled the “Massage Practice Act” (Act), governs the practice of massage<sup>24</sup> in Florida. A significant portion of the Act is dedicated to regulating massage establishments, which are defined as “a site or premises, or portion thereof, wherein a massage therapist practices massage.”<sup>25</sup>

Massage establishments may only operate if they have applied for and received a license from the Department of Health (DOH) in accordance with rules adopted by the Board of Massage Therapy (Board).<sup>26</sup> The Board’s rules:<sup>27</sup>

- Govern the operation of massage establishments and their facilities, personnel, safety and sanitary requirements, financial responsibility, and insurance coverage;
- Require DOH to inspect a proposed massage establishment upon receipt of an application for licensure to ensure that the site is to be utilized for massage; and
- Require DOH to periodically inspect licensed massage establishments at least once a year.

In order to be licensed as a massage therapist, an applicant must:<sup>28</sup>

- Be at least 18 years of age or have received a high school diploma or graduate equivalency diploma;
- Complete a course of study at a massage school or apprentice program approved by the Board;
- Pass an examination; and
- Submit to a background screening.

The Board must deny an application for a massage therapist or a massage establishment if the applicant, owner, officer manager or person with an ownership interest in the establishment has been convicted or found guilty of a criminal offense under sections:

- 787.01, F.S., relating to kidnapping;
- 787.02, F.S., relating to false imprisonment;
- 787.025, F.S., relating to luring or enticing a child;
- 787.06, F.S., relating to human trafficking;
- 787.07, F.S., relating to human smuggling;
- 794.011, F.S., relating to sexual battery;
- 794.08, F.S., relating to female genital mutilation;
- 796.03, F.S., relating to procuring a person under the age of 18 for prostitution;
- 796.035, F.S., relating to the selling or buying of minors into prostitution;
- 796.04, F.S., relating to forcing, compelling, or coercing another to become a prostitute;
- 796.05, F.S., relating to deriving support from the proceeds of a prostitute;
- 796.07(4)(c), F.S., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, F.S., relating to prohibiting prostitution and related acts;
- 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;

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<sup>24</sup> The term “massage” is defined as the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation. s. 480.033(3), F.S.

<sup>25</sup> Section 480.033(7), F.S.

<sup>26</sup> Section 480.043(1), F.S.

<sup>27</sup> See Rules 64B7-26.003, 64B7-26.004, and 64B7-26.005, F.A.C.

<sup>28</sup> Sections 480.041, and 480.042, F.S.

- 825.1025(2)(b), F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;
- 827.071, F.S., relating to sexual performance by a child;
- 847.0133, F.S., relating to the protection of minors;
- 847.0135, F.S., relating to computer pornography;
- 847.0138, F.S., relating to the transmission of harmful materials to a minor by electronic device or equipment; or
- 847.0145, F.S., relating to the selling or buying of minors.<sup>29</sup>

In addition to practicing massage therapy in a licensed massage establishment, a massage therapist may practice at a client's residence or office, at a sports event, or at a convention or trade show.<sup>30</sup>

Florida law prohibits sexual misconduct<sup>31</sup> in the practice of massage therapy.<sup>32</sup> In 2013, the Legislature passed legislation to restrict the practice of illicit sex acts at massage establishments by limiting the hours a massage establishment may be open at night.<sup>33</sup> Additionally, s. 796.07(2)(a), F.S., makes it a second degree misdemeanor to own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution. Subsequent convictions under s. 796.07(2)(a), F.S., may be a first degree misdemeanor or a third degree felony.

Despite these prohibitions, many massage establishments are used as havens for prostitution.<sup>34</sup> For example, in 2014, five women were arrested for prostitution at a Winter Park massage parlor that was well known for prostitution activity.<sup>35</sup> In that same year, police raided a Boca Raton spa and arrested the owner and two employees for prostitution.<sup>36</sup> Additionally, earlier this year, two women were arrested for prostitution at a Port St. Lucie massage parlor.<sup>37</sup>

### Effect of the Bill

The bill creates s. 796.07(7) which reclassifies an offense of s. 796.07(2)(a), F.S., as a third degree felony if the place, structure, building or conveyance that is owned, established, maintained, or operated for prostitution is a massage establishment required to be licensed under s. 480.043, F.S.

The bill adds the new offense to the list of prohibited criminal offenses that disqualify an applicant for a massage therapist license or massage establishment license in ss. 480.041 and 480.043, F.S.

### Human Trafficking

Section 787.06, F.S., is Florida's human trafficking statute and defines "human trafficking" as the "transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person." The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking using coercion for labor or services,

<sup>29</sup> ss. 480.041(7) and 480.043(8), F.S.

<sup>30</sup> Section 480.046(1)(n), F.S.

<sup>31</sup> "Sexual misconduct in the practice of massage therapy means violation of the massage therapist-patient relationship through which the massage therapist uses that relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of practice or the scope of generally accepted examination or treatment of the patient." s. 480.0485

<sup>32</sup> s. 480.0485, F.S.

<sup>33</sup> Ch. 2013-212, Laws of Fla. Section 480.0475(1), F.S., states a person may not operate a massage establishment between the hours of midnight and 5 a.m., with exceptions. A person who violates s. 480.0475(1), F.S., commits a first degree misdemeanor and any subsequent violations is a third degree felony. s. 480.0475(3), F.S.

<sup>34</sup> Laura J. Lederer, *Addressing Demand: Why and How Policymakers Should Utilize Law and Law Enforcement to Target Customers of Commercial Sexual Exploitation*, 23 REGENT U. L. REV. 297, 302 (2011).

<sup>35</sup> David Harris, *MBI: Massage parlor in Winter Park raided for prostitution*, ORLANDO SENTINEL (Dec. 11, 2014), <http://www.orlandosentinel.com/news/breaking-news/os-massage-parlor-winter-park-prostitution-20141211-story.html>.

<sup>36</sup> Brett Clarkson, *Boca Raton spa a front for prostitution, say cops: Owner, two employees of O Asian Wellness Spa and Massage arrested Friday*, SUN SENTINEL (June 9, 2014) [http://articles.sun-sentinel.com/2014-06-09/news/fl-boca-raton-massage-arrest-20140609\\_1\\_prostitution-three-women-two-employees](http://articles.sun-sentinel.com/2014-06-09/news/fl-boca-raton-massage-arrest-20140609_1_prostitution-three-women-two-employees).

<sup>37</sup> *Two arrested in Port St. Lucie massage parlor prostitution bust*, TC PALM (July 16, 2015) <http://www.tcpalm.com/news/st-lucie-county/two-arrested-in-port-st-lucie-massage-parlor-prostitution-bust-ep-1190549285-335284131.html>.

or for commercial sexual activity.<sup>38</sup> The statute also makes it a second degree felony to permanently brand<sup>39</sup> a victim of human trafficking.<sup>40</sup>

### **Effect of the Bill**

The bill clarifies that one can only be convicted of branding a victim of human trafficking if the branding is for the purpose of *committing* or *facilitating* an offense of human trafficking. Thus, a tattoo artist could not be arrested for giving a tattoo to a victim of human trafficking years after the trafficking occurred.

The bill adds a reclassification of an offense if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of an offense under s. 787.06, F.S. The reclassification makes a second degree felony a first degree felony and a first degree felony a life felony.

### **First Degree Murder**

Section 782.04(1)(a)2., F.S., defines first degree murder as the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate:

- Trafficking offense prohibited by s. 893.135(1), F.S.;
- Arson;
- Sexual battery;
- Robbery;
- Burglary;
- Kidnapping;
- Escape;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aircraft piracy;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Carjacking;
- Home-invasion robbery;
- Aggravated stalking;
- Murder of another human being;
- Resisting an officer with violence to his or her person;
- Aggravated fleeing or eluding with serious bodily injury or death;
- Felony that is an act of terrorism or is in furtherance of an act of terrorism.

First degree murder is a capital felony punishable by death if the proceeding held to determine the sentence according to the procedure set forth in s. 921.141, F.S.,<sup>41</sup> results in findings by the court that such person shall be punished by death. If such proceeding results in findings by the court that the person shall not be punished by death, such person must be punished by life imprisonment and is ineligible for parole.

### **Effect of the Bill**

The bill adds human trafficking to the list of offenses contained in s. 782.04(1)(a)2., F.S. As a result, when a death results during the perpetration or attempt to perpetrate human trafficking, a person could be charged with first degree murder.

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<sup>38</sup> Section 787.06(3), F.S.

<sup>39</sup> Section 787.06(4)(b), F.S., defines permanently brand as a mark on the body that can only be removed or repaired by surgical means, laser treatment or other medical procedure.

<sup>40</sup> s. 787.06(4)(b), F.S.

<sup>41</sup> Section 921.141, F.S., requires a court, upon conviction or adjudication of guilt of a defendant of a capital felony, to conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable. After hearing all the evidence, the jury must deliberate and render an advisory sentence to the court, based upon specified aggravating and mitigating circumstances. Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, must enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it must set forth in writing its findings upon which the sentence of death is based.

## **Sexual Predator and Sexual Offender Qualifying Offenses**

Section 775.21, F.S., which contains various registration requirements for sexual predators, provides in part, that a person must be designated a sexual predator if the person is convicted, on or after October 1, 1993, of:

1. A capital, life, or first-degree felony violation, or any attempt thereof, of any of the criminal offenses prescribed in the following statutes in this state or a similar offense in another jurisdiction:
  - Sections 787.01 (kidnapping) or 787.02, F.S. (false imprisonment), where the victim is a minor and the defendant is not the victim's parent or guardian
  - Section 794.011, F.S. (sexual battery)
  - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age)
  - Section 847.0145, F.S. (selling or buying of minors); or
2. Any felony violation, or attempt thereof, of:
  - Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability)
  - Section 394.4593(2), F.S. (sexual misconduct with a patient)
  - Sections 787.01 (kidnapping), 787.02 (false imprisonment), and 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian
  - Section 787.06(3)(b),(d),(f),(g), F.S. (relating to human trafficking)
  - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.<sup>42</sup>
  - Section 794.05, F.S. (unlawful activity with certain minors)
  - Former section 796.03, F.S. (procuring a person under the age of 18 for prostitution)
  - Former section 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution)
  - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age)
  - Section 810.145(8)(b), F.S. (relating to video voyeurism)
  - Section 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person)
  - Section 827.071, F.S. (sexual performance by a child)
  - Section 847.0135, F.S. (computer pornography) excluding s. 847.0135(6), F.S.<sup>43</sup>
  - Section 847.0145, F.S. (selling or buying of minors)
  - Section 916.1075(2), F.S. (sexual misconduct with a forensic client)
  - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
  - The offender has previously been convicted of any of the statutes enumerated above, including s. 847.0133, F.S. (protection of minors / obscenity).

Section 943.0435, F.S., which contains various registration requirements for sexual offenders, defines the term "sexual offender," in part, as a person who:

1. Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction:
  - Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability)
  - Section 394.4593(2), F.S. (sexual misconduct of a patient)

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<sup>42</sup> Section 794.011(10), F.S., relates to falsely accusing specified persons of sexual battery.

<sup>43</sup> Section 847.0135(6), F.S., relates to owners or operators of computer services liable for permitting subscribers to post child pornography.

- Sections 787.01, (kidnapping), 787.02, (false imprisonment), and 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian
  - Section 787.06(3)(b),(d),(f),(g), F.S. (relating to human trafficking)
  - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.
  - Section 794.05, F.S. (unlawful activity with certain minors)
  - Former section 796.03, F.S. (procuring a person under the age of 18 for prostitution)
  - Former section 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution)
  - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age)
  - Section 810.145(8), F.S. (relating to video voyeurism)
  - Section 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person)
  - Section 827.071, F.S. (sexual performance by a child)
  - Section 847.0133, F.S. (prohibition of certain acts in connection with obscenity)
  - Section 847.0135, F.S. (computer pornography and traveling to meet a minor) excluding s. 847.0135(6), F.S.
  - Section 847.0137, F.S. (transmission of pornography by electronic device or equipment)
  - Section 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment)
  - Section 847.0145, F.S. (selling or buying of minors)
  - Section 916.1075(2), F.S. (sexual misconduct with a forensic client)
  - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
2. Has been released on or after October 1, 1997, from the sanction<sup>44</sup> imposed for any conviction of an offense described above.

Sections 944.606 and 944.607, F.S., which contain provisions relating to sexual offenders in the custody of or under the supervision of the Department of Corrections (DOC), also contain definitions of the term "sexual offender" that include the list of qualifying offenses enumerated above. A sexual predator or sexual offender must comply with a number of statutory registration requirements.<sup>45</sup> Failure to comply with these requirements is generally a third degree felony.<sup>46</sup>

Currently, a person convicted of racketeering under s. 895.03, F.S., that involved an offense listed above is not adjudicated as a sexual predator or sexual offender. For example, a person could be convicted of racketeering involving human trafficking by deriving proceeds from the commercial sexual activity of a minor but not be required to register as sexual predator or sexual offender.

### **Effect of the Bill**

The bill amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., to add the offense of s. 895.03, F.S., (racketeering) to the qualifying offenses for sexual offender and sexual predator if the court has made written findings that the racketeering activity involved at least one sexual offense included in the definition of sexual predator or sexual offender or the offense involved sexual intent or motive.

Finally, the bill reenacts sections of law to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted sections.

## **B. SECTION DIRECTORY:**

Section 1. Amends s. 39.01, F.S., relating to definitions concerning proceedings relating to children.

<sup>44</sup> A sanction imposed in this state or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility. Section 943.0435(1)(a), F.S.

<sup>45</sup> See generally, ss. 775.21, 943.0435, 944.607, and 985.4815, F.S.

<sup>46</sup> Sections 775.21(10) and 943.0435(14), F.S.

Section 2. Amends s. 782.04, F.S., relating to murder.

Section 3. Amends s. 787.06, F.S., relating to human trafficking.

Section 4. Amends s. 480.041, F.S., relating to massage therapists; qualifications; licensure; endorsement.

Section 5. Amends s. 480.043, F.S., relating to massage establishments; requisites; licensure; inspection.

Section 6. Amends s. 796.06, F.S., relating to renting space to be used for lewdness, assignation, or prostitution.

Section 7. Amends s. 796.07, F.S., relating to prohibiting prostitution and related acts.

Section 8. Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.

Section 9. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 10. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 11. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 12. – 68. Reenacting sections of law to incorporate the bill's amendments to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted sections.

Section 69. Providing an effective date of October 1, 2016.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

#### **2. Expenditures:**

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. The bill may have a positive prison bed impact on the Department of Corrections in that it increases the number of people subject to sex offender registration requirements and reclassifies existing felony offenses.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill does not appear to have any impact on local government revenues.

#### **2. Expenditures:**

The bill does not appear to have any impact on local government expenditures.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.

##### 2. Other:

The equal protection clause of the United States Constitution requires that no state shall deny any person within its jurisdiction "equal protection of the laws."<sup>47</sup> Furthermore, Florida's equal protection clause states that "no person shall be deprived of any right because of race, religion, national origin, or physical disability."<sup>48</sup> The bill may raise an equal protection issue where minors will be immune from prosecution for prostitution.

A court's response to an equal protection claim depends on the classification of people involved. Courts review classifications based on age under rational basis standard, in which classifications will be upheld unless they are wholly arbitrary or bear no rational relationship to any conceivable legitimate government interest.<sup>49</sup> The Florida Supreme Court has held that the state has a compelling interest in preventing the sexual exploitation of children.<sup>50</sup>

Furthermore, the Texas Supreme Court overturned a 13 year-old's conviction for prostitution because children lack the capacity to consent to sex.<sup>51</sup>

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to create the need for rulemaking or rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 1, 2015, the Criminal Justice Subcommittee adopted a proposed committee substitute with two amendments and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by:

- Adding human trafficking as a qualifying felony for first degree murder in the commission of a felony;
- Clarifying the offense of branding a victim of human trafficking;
- Reclassifying an offense in s. 787.06, F.S., if the victim suffers great bodily harm, permanent disability, or permanent disfigurement;
- Reclassifying an offense of s. 796.07(2)(a), F.S., if the place, structure, building or conveyance that is owned, established, maintained, or operated for prostitution is a massage establishment required to be licensed under s. 480.043, F.S.;
- Adding the reclassification offense to the list of disqualifying offenses for applicants for a massage therapist or massage establishment license; and
- Increasing penalties for knowingly renting space to be used for prostitution.

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<sup>47</sup> U.S. CONST. amend XIV, s. 1.

<sup>48</sup> FLA. CONST. art. I, s. 2.

<sup>49</sup> *Gregory v. Ashcroft*, 501 U.S. 452, 470 (1991).

<sup>50</sup> *Jones v. State*, 640 So. 2d 1084, 1091 (Fla. 1994).

<sup>51</sup> *In re B.W.*, 313 S.W.3d at 825.

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