

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 Criminal Justice Committee

BILL: SB 2478

INTRODUCER: Senator Lynn

SUBJECT: Sex Trafficking

DATE: April 2, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.			JU	
3.			JA	
4.				
5.				
6.				

I. Summary:

This bill addresses sex trafficking by:

- Amending the Civil Remedies for Criminal Practices Act, to add s. 796.06, F.S., relating to owning or renting a place for the purpose of any activity prohibited under ch. 796, F.S. (prostitution), to the definition of “criminal activity” for the purpose of a cause of action authorized under ch. 772, F.S.
- Adding an offense involving the selling of a minor into prostitution by the minor’s parent, legal guardian, or custodian to the list of offenses that qualify a person for designation and registration as a sexual predator and preclude volunteering and working where children regularly congregate. The offense is also added to several sexual offender registration statutes.
- Defining the terms “assignation,” “coerces,” “induces,” “lewdness,” “prostitution,” and “sexual activity” for the purpose of ch. 796, F.S.
- Increasing from a second degree felony to a first degree felony the offense of procuring a person under the age of 18 for prostitution.
- Increasing from a third degree felony to a first degree felony the offense of compelling or coercing another person to become a prostitute.
- Increasing from a first degree felony to a life felony the offense of selling of a minor into prostitution by the minor’s parent, legal guardian, or custodian.
- Revising the enhanced sex trafficking offense to apply to a victim who is a minor (in contrast to current law, in which the victim is less than 14 years of age), increasing sex trafficking from a second degree felony to a first degree felony, and increasing enhanced sex trafficking from a first degree felony to a life felony.

- Applying the offense of living or deriving support or maintenance from what is believed to be the earnings or proceeds of prostitution to living or deriving support “directly or indirectly” from prostitution proceeds.
- Revising a current offense relating to prostitution to apply to owning, establishing, maintaining, letting, renting or operating any place, structure, building or part thereof or trailer or other conveyance, with knowledge or reasonable cause to believe that it is being used, or will be used, in whole or in part for the purpose of any activity prohibited under ch. 796, F.S. Further, the penalty is increased from a second degree misdemeanor to a third degree felony.
- Revising a current cause of action relating to prostitution to provide that this cause of action is against a person who coerces or induces another person to become a prostitute or remain in prostitution or collects or receives earnings derived from prostitution. Further, the fact that the plaintiff stipulated or otherwise agreed that the prohibited acts did not occur as a result of coercion is not a defense, and in the case of a cause of action based on inducement, the fact that the victim consented is not a defense. Further, the court is required to award attorney’s fees and costs.
- Providing that if a business entity is convicted of a violation of ch. 796, F.S., the court may, when appropriate, order its dissolution or reorganization, suspension or revocation of any license, or the surrender of its charter, if it is organized under Florida law, or any certificate to conduct business in this state, if it is not organized under Florida law. Further, all property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of a provision of ch. 796, F.S., is subject to civil forfeiture.
- Providing that any place, structure, building or part or trailer of other conveyance that has been used on more than two occasions within a 6-month period, as the site of a violation of ch. 796, F.S., may be declared a public nuisance and abated or enjoined.
- Adding ch. 796, F.S., to the list of predicate offenses for the purpose of RICO prosecutions.
- Amending the offense severity ranking chart of the Criminal Punishment Code to rank the offense of a third or subsequent prostitution violation in Level 1; rank the offense of furthering criminal activity prohibited in ch. 796, F.S., in Level 2; rank the offense of deriving support from prostitution proceeds in Level 4; rank the offense of sex trafficking in Level 8; and rank the offenses of sex trafficking involving a minor and selling or buying of minors into sex trafficking in Level 9.

This bill amends ss. 322.28, 772.102, 775.21, 796.03, 796.04, 796.045, 796.05, 796.09, 823.05, 893.138, 895.02, 921.0022, 943.0435, 944.606, and 944.607, F.S., and creates ss. 796.011 and 796.10, F.S.

II. Present Situation:

Chapter 796, F.S., contains several sections of statute which create criminal penalties for a variety of prostitution-related offenses as discussed further below.

Procuring a person under age 18 for prostitution

Section 796.03, F.S., provides that it is a second degree felony to procure a person under the age of 18 for prostitution.¹

Compelling or forcing another person to become a prostitute

Section 796.04, F.S., provides that it is a third degree felony to force, compel or coerce another person to become a prostitute.

Sex trafficking

Section 796.045, F.S., provides that a person who knowingly recruits, entices, harbors, transports, provides or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution commits the offense of sex trafficking, a second degree felony. If the victim of the offense is under the age of 14 or if the offense results in death, the offense is a first degree felony.

Section 796.035, F.S., provides that it is a life felony for any parent, legal guardian, or other person having custody or control of a minor to sell or otherwise transfer custody of the minor with knowledge that, as a consequence of the sale or transfer, force, fraud, or coercion will be used to cause the minor to engage in prostitution or otherwise participate in the trade of sex trafficking.

Deriving support from the proceeds of prostitution

Section 796.05, F.S., provides that it is a third degree felony for any person with reasonable belief or knowing that another person is engaged in prostitution to live or derive support or maintenance in whole or in part from what is believed to be the earnings or proceeds of such person's prostitution.²

Renting space for lewdness, assignation or prostitution

Section 796.06, F.S., provides that it is a second degree misdemeanor to let or rent any place, structure, or part thereof, or trailer or other conveyance, with the knowledge that it will be used for the purpose of lewdness, assignation, or prostitution.

Prostitution

Section 796.07, F.S., provides that it is unlawful to do any of the following:

¹ In *Petty v. State*, 761 So.2d 474 (Fla. 3rd DCA 2000), the court reversed a conviction where the defendant paid a minor to have sex with him where there was no evidence that the minor was exploited for the defendant's personal gain or that a third party was involved. The court held that the "statute at issue addresses the criminal act of hiring of a minor for sexual activity with a third party. The term 'procurement' connotes a pecuniary gain from the exploitation of another.... [I]n the context of prostitution, the word 'procure' must be given its specialized meaning, which is to 'obtain as a prostitute for another,' connoting a commercial motive." (quoting *Kobel v State*, 745 So.2d 979 (Fla. 4th DCA 1999)).

² *State v. Morris*, 540 So.2d 226, 226-227 (Fla. 5th DCA 1989) ("The information is deficient and fails to state a violation of the statute because it fails to allege that appellant derived support from the prostitution earnings. It merely says he got support from her, knowing she was a prostitute. At the hearing below appellant's attorney convinced the judge to dismiss the case with the argument that merely knowing she was a prostitute and receiving support do not necessarily combine to make a violation of the statute. We agree. In order to charge a crime under the statute it must be alleged the accused lived from or derived support from the prostitution earnings.")

- Own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution.
- Offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act.
- 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.
- 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.
- Offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation.
- Solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.
- 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.
- Aid, abet, or participate in any of the acts or things previously described.
- Purchase the services of any person engaged in prostitution.

Coercion or inducement – civil cause of action

Section 796.09, F.S., provides that a person has a cause of action for compensatory and punitive damages against any of the following persons:

- A person who coerced that person into prostitution.
- A person who coerces that person to remain in prostitution.
- A person who uses coercion to collect or receive any part of that person's earnings derived from prostitution.

Certain facts do not constitute a defense to a complaint under this section including that:

- The plaintiff was paid or otherwise compensated for acts of prostitution;
- The plaintiff engaged in acts of prostitution prior to any involvement with the defendant; or
- The plaintiff made no attempt to escape, flee, or otherwise terminate contact with the defendant.

The section authorizes the court to award prevailing plaintiff's reasonable attorney's fees and costs.

Civil remedies for criminal practices

Chapter 772, F.S., is known as the "Civil Remedies for Criminal Practices Act." Section 772.103, F.S., makes it unlawful for a person with criminal intent to receive any proceeds derived, directly or indirectly, from a pattern of criminal activity. Section 772.104, F.S., provides that 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., has a cause of action for threefold the actual damages sustained and reasonable attorney's fees and court costs. Section 772.102 defines the term

“criminal activity” to include a list of criminal offenses. Several offenses within ch. 796, F.S., are currently included within the definition.

RICO

Sections 895.01 through 895.06, F.S., are known as the “Florida Racketeer Influenced and Corrupt Organization Act” (RICO Act). The sections contain criminal penalties and a civil cause of action for racketeering activity. Section 895.02, F.S., defines the term “racketeering activity” to include a list of criminal offenses, including several offenses within ch. 796, F.S.

Local administrative action to abate prostitution related nuisances

Section 893.138, F.S., gives a county or municipality the authority, by ordinance, to create an administrative board to hear complaints regarding nuisances described in the section. If the board declares a place or premises to be a public nuisance, it may enter an order requiring the owner of the place or premises to adopt a procedure to abate the nuisance or it may enter an order prohibiting:

- The maintaining of the ordinance;
- The operating or maintaining of the place or premises, including the closure of the place or premises or any part, thereof; or
- The conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.

This section provides that any place or premises that has been used on more than two occasions within a 6-month period as the site of a violation of the prostitution statute, s. 796.07, F.S., may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in the section.

Places declared a nuisance

Section 823.05, F.S., provides, in part, that whoever erects, establishes, continues, or maintains, owns, or leases any building, booth, tent or place which tends to annoy the community or injure the health of the community, or any house or place of prostitution, assignation, or lewdness shall be deemed guilty of maintaining a nuisance. The section provides that such places shall be abated or enjoined as provided in ss. 60.05 and 60.06, F.S.

Section 60.05, F.S., provides that when any nuisance as defined in s. 823.05, F.S., exists, the Attorney General, state attorney, city attorney, county attorney, or any citizen of the county may sue in the name of the state to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists. The court may issue a temporary injunction enjoining the nuisance and after trial, may issue a permanent injunction.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 772.102, F.S., relating to definitions applicable to ch. 772, F.S., the Civil Remedies for Criminal Practices Act, to add s. 796.06, F.S., relating to letting or renting a place for the purpose of any activity prohibited under ch. 796, F.S., to the definition of “criminal activity” for the purpose of instituting a cause of action authorized under ch. 772, F.S.

Section 2 of the bill amends s. 775.21, F.S., relating to the Florida Sexual Predators Act, to add an offense to the list of offenses that qualify a person for designation and registration as a sexual predator and that preclude volunteering and working where children regularly congregate. The offense involves a parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody of the minor, with knowledge that, as a consequence of the sale or transfer, force, fraud, or coercion will be used to cause the minor to engage in prostitution or otherwise participate in the trade of sex trafficking. (See Section 6 of the bill.)

Section 3 of the bill creates s. 796.011, F.S., relating to definitions under ch. 796, F.S., to define the following terms:

- “Assignment” means the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement.
- “Coerces” means uses force or intimidation, or any practice of domination or restraint, in order to bring about or cause a person to take certain action. The term includes, but is not limited to, the use of:
 - Physical force or threat of physical force.
 - Physical or mental torture.
 - Kidnapping.
 - Blackmail.
 - Extortion or claims of indebtedness.
 - Threat of legal complaint or report of delinquency.
 - Threat to interfere with parental rights or responsibilities, whether by judicial or administrative action or otherwise.
 - Restraint of speech or communication with others.
 - Exploitation of a condition of developmental disability, cognitive limitation, affective disorder, or substance dependency.
 - Exploitation of victimization by sexual abuse.
 - Exploitation of pornographic performance.
 - Exploitation of human needs for food, shelter, safety, or affection.
- “Induces” means offers, promises, or withholds or threatens to withhold, a benefit or advantage, whether legal, financial, or otherwise, such as a promise of marriage, employment, or material support or advantage, in order to bring about or cause a person to take certain action.
- “Lewdness” means any indecent or obscene act.
- “Prostitution” means the giving or receiving of the body for sexual activity for hire; however, the term does not include sexual activity between spouses.
- “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; however, the term does not include acts done for bona fide medical purposes.

Section 4 of the bill amends s. 796.03, F.S., relating to procuring a minor for prostitution, to increase from a second degree felony to a first degree felony the offense of procuring a minor for prostitution.

Section 5 of the bill amends s. 796.04, F.S., relating to forcing, compelling or coercing another to become a prostitute, to increase from a third degree felony to a first degree felony the offense of compelling or coercing another person to become a prostitute.

Section 6 of the bill renumbers s. 796.035, F.S., relating to sex trafficking, selling or buying of minors into sex trafficking or prostitution, as a subsection within s. 796.045, F.S., relating to sex trafficking. The first degree felony offense in s. 796.035, F.S., that is moved to s. 796.045, F.S., involves a parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody of the minor, with knowledge that, as a consequence of the sale or transfer, force, fraud, or coercion will be used to cause the minor to engage in prostitution or otherwise participate in the trade of sex trafficking. The bill increases the penalty for this offense to a life felony.

Additionally, the bill amends s. 796.0454, F.S. Currently, the statute provides that any person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution commits the offense of sex trafficking. The offense is a second degree felony. If the victim of the offense is under the age of 14 or the offense results in death, the offense is a first degree felony. The bill changes the offense of sex trafficking that involves a victim less than 14 years of age to make it apply to a victim who is a minor. The bill also makes the offense of sex trafficking a first degree felony when it does not involve a victim who is a minor and makes the offense a life felony when it involves a victim who is a minor or results in death.

Section 7 of the bill amends s. 796.05, F.S., relating to deriving support from the proceeds of prostitution, to apply the offense of living or deriving support or maintenance from what is believed to be the earnings or proceeds of prostitution to living or deriving support “directly or indirectly” from prostitution proceeds.

Section 8 of the bill amends s. 796.06, F.S., relating to further activity prohibited under ch. 796, F.S., to modify the second degree misdemeanor offense of letting or renting any place, structure or trailer or other conveyance, with the knowledge that it will be used for the purpose of lewdness, assignation, or prostitution. The bill provides that any person who owns, establishes, maintains, lets, rents or operates any place, structure, building, or part thereof, or trailer or other conveyance, with the knowledge or reasonable cause to believe that it is being used, or will be used, in whole or in part, for the purpose of any activity prohibited under ch. 796, F.S., commits a third degree felony.

Section 9 of the bill amends s. 796.07, F.S., relating to prostitution, to delete definitions of terms in that section that are defined in Section 1 of the bill. The bill also removes the offense of owning, establishing, maintaining or operating any place, structure, building or conveyance for the purpose of lewdness, assignation, or prostitution. This offense is covered by the changes made to s. 796.06, F.S. (Section 8 of the bill). Other changes are made to offenses in this section to clarify what acts are prohibited by this section and what acts are prohibited by other sections within ch. 796, F.S.

Section 10 of the bill amends s. 796.09, F.S., relating to coercion. Currently under this section a person has a cause of action for compensatory and punitive damages against a person who

coerced that person into prostitution, to remain in prostitution, or to collect or receive any part of that person's earnings derived from prostitution. The bill applies this cause of action to a person who coerced or *induced*³ that person to become a prostitute or remain in prostitution or who collects or receives earnings derived from prostitution.

The section also currently provides that certain facts do not constitute a defense to a complaint under this section. Under the bill, the fact that the plaintiff stipulated or otherwise agreed that the prohibited acts did not occur as a result of coercion is not a defense to a complaint under this section, and in the case of a cause of action based on inducement, the fact that the victim consented is not a defense.

The section also authorizes the court to award prevailing plaintiff's reasonable attorney's fees and costs. The bill requires the court to award these fees and costs.

Section 11 of the bill creates s. 796.10, F.S., relating to violations by a business entity, to provide that if a business entity⁴ is convicted of a violation of ch. 796, F.S., the court may, when appropriate, order:

- Its dissolution or reorganization;
- The suspension or revocation of any license, including, but not limited to, any occupational license, license under ch. 561, F.S., permit, or prior approval granted to the business entity by a state agency; or
- The surrender of its charter, if organized under the laws of this state, or any certificate to conduct business in this state, if it is not organized by the laws of this state.

The bill also provides that all property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of a provision of ch. 796, F.S., is subject to civil forfeiture to the state under ss. 932.701-932.706, F.S.

Section 12 of the bill amends s. 823.05, F.S., relating to places declared a nuisance, to provide that any place, structure, building, or part thereof, or trailer of other conveyance that has been used on more than two occasions within a 6-month period, as the site of a violation of ch. 796, F.S., may be declared a public nuisance and abated or enjoined.

Section 13 of the bill amends s. 893.138, F.S., relating to local administrative action to abate drug-related, prostitution-related, or stolen-property related public nuisances and criminal street gang activity, to provide that a place or premises that has been used on more than two occasions within a 6-month period as the site of a violation of ch. 796, F.S., may be declared to be a public nuisance and abated or enjoined.

³ The bill defines the term "induces" as offering, promising or withholding or threatening to withhold, a benefit or advantage, whether legal, financial, or otherwise, such as a promise of marriage, employment, or material support or advantage, in order to bring about or cause a person to take certain action.

⁴ The bill defines a "business entity" as including, but not being limited to, any corporation, syndicate, association, firm, joint venture, partnership, limited liability company, or business trust.

Section 14 of the bill amends s. 895.02, F.S., relating to predicate offenses for the purpose of RICO prosecutions, to amend the definition of “racketeering activity” to include ch. 796, F.S.

Section 15 of the bill amends s. 921.0022, F.S., relating to the offense severity ranking chart of the Criminal Punishment Code, to rank the offense of a third or subsequent prostitution violation in Level 1; rank the offense of use of space for activity prohibited in ch. 796, F.S., in Level 2; rank the offense of deriving support from prostitution proceeds in Level 4; rank the offense of sex trafficking in Level 8; and rank the offenses of sex trafficking involving a minor and selling or buying of minors into sex trafficking in Level 9.

Section 16 of the bill amends s. 322.28, F.S., relating to driver’s license suspension or revocation, to conform a cross-reference to changes made by bill.

Sections 17-19 of the bill amend ss. 943.0435, 944.606 and 944.607, F.S., relating to sexual offender registration, to reference ch. 796, F.S., as a qualifying offense for the purpose of sexual offender registration and related requirements.

Section 20 of the bill provides that the bill takes effect July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference estimates that the bill should have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
