

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 Children, Families, and Elder Affairs Committee

BILL: SB 1700

INTRODUCER: Senator Ring

SUBJECT: Sexual Exploitation

DATE: April 6, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh	CF	Pre-meeting
2.	_____	_____	CJ	_____
3.	_____	_____	HA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill creates the “Florida Safe Harbor Act” intended to provide a more coordinated response to address the child welfare service needs of sexually exploited children. Specifically, the bill:

- Provides legislative findings and intent and establishes legislative goals for the state relating to the status and treatment of sexually exploited children;
- Amends the definitions of “child who is found to be dependent” and “sexual abuse of a child” to reference sexual exploitation;
- Requires a law enforcement officer who takes a sexually exploited child into custody to deliver the child to a short-term safe house if one is available;
- Provides a process for the assessment and placement of sexually exploited children in a safe house, if available; provides for placement updates to the court during judicial review hearings; and provides for data collection relating to these placements by the Department of Children and Family Services (DCF or department);
- Provides that funds included annually in the General Appropriations Act shall be appropriated in a separately identified special category as “Special Categories: Grants and Aids – Safe Houses” and specifies uses for funds;
- Provides for the establishment of short time safe houses and a statewide safe house to be used as residential group care facilities for sexually exploited children;
- Provides definition for the terms, “child advocate,” “safe house,” “sexually exploited child” and “short-term safe house”;
- Provides for services for sexually exploited children residing in a safe house;
- Amends provisions relating to prostitution so that certain acts related to prostitution are unlawful only if committed by any person 16 years of age or older; and

- Prohibits juvenile probation officers and the state attorney from filing a petition for delinquency for an act related to prostitution unless the child has been previously adjudicated delinquent.

This bill substantially amends ss. 39.001, 39.01, 39.401, 39.402, 39.521, 322.28, 796.07, 985.145, and 985.15 and creates ss. 39.524 and 409.1678 of the Florida Statutes.

II. Present Situation:

Background

The United Nations defines human trafficking as the recruitment, transportation, transfer, harboring, or receipt of persons by improper means such as force, abduction, fraud, or coercion for an improper purpose including forced labor or sexual exploitation. The U.S. Government defines severe form of human trafficking as:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.¹

A victim need not be physically transported from one location to another in order for the crime to fall within these definitions.

While the annual Trafficking in Persons report addresses three main types of exploitation of children,² the National Center for Missing and Exploited Children states that there are many types of sexual exploitation involving children, including:

- Possession, manufacture, and distribution of child pornography;
- Child prostitution;
- Sex tourism involving children;
- Extra-familial child sexual molestation;
- Online enticement of children for sexual acts;
- Unsolicited obscene material sent to a child;
- Misleading domain names; and
- Misleading words or digital images on the internet.³

The United States not only faces an influx of international victims of sex trafficking, but also has its own problem of interstate sex trafficking of minors. While comprehensive research to

¹ Trafficking Victims Protection Act of 2000. Public Law No. 106-386.

² Those include child sex trafficking, commercial sexual exploitation of children which includes child prostitution and child pornography, and child sex tourism. U.S. Department of State, Trafficking in Persons Report 2009. Available at: <http://www.state.gov/g/tip/rls/tiprpt/2009/123126.htm>. (Last visited April 1, 2010).

³ National Center for Missing and Exploited Children. Exploited Children Division. Available at: http://www.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en_US&PageId=218. (Last visited March 31, 2010).

document the number of children engaged in prostitution in the United States is lacking, it is estimated that about 293,000 American youth are currently at risk of becoming victims of commercial sexual exploitation.⁴ The majority of American victims of commercial sexual exploitation tend to be runaway or thrown away youth who live on the streets and become victims of prostitution.⁵ These children generally come from homes where they have been abused, or from families that have abandoned them, and often become involved in prostitution as a way to support themselves financially or to get the things they want or need.⁶

Other young people are recruited into prostitution through forced abduction, pressure from parents, or through deceptive agreements between parents and traffickers.⁷ Once these children become involved in prostitution, they are often forced to travel far from their homes and as a result are isolated from their friends and family.⁸ Few children in this situation are able to develop new relationships with peers or adults other than the person who is victimizing them.⁹ The lifestyle of such children revolves around violence, forced drug use and constant threats.¹⁰

Among children and teens living on the streets in the United States, involvement in commercial sex activity is a problem of epidemic proportion. Approximately 55% of street girls engage in formal prostitution.¹¹ Of the girls engaged in formal prostitution, about 75% worked for a pimp. 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.¹² About one-fifth of these children become entangled 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.¹³ The average age at which girls first become victims of prostitution is 12-14. It is not only the girls on the streets that are affected. For boys and transgender youth, the average age of entry into prostitution is 11-13.¹⁴

National Center for Missing and Exploited Children

The National Center for Missing & Exploited Children (NCMEC) was started in 1984 as a not-for-profit corporation, mandated by Congress and working in partnership with the U.S. Department of Justice to serve as the national resource center and clearinghouse on missing and

⁴ Estes, R.J. and Weiner, N.A. *Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico*, University of Pennsylvania, 2002. Available at: http://www.sp2.upenn.edu/restes/CSEC_Files/Exec_Sum_020220.pdf. (Last visited March 31, 2010).

⁵ *Id.*

⁶ *Id.*

⁷ U.S. Department of Justice, Child Exploitation and Obscenity Section. Domestic Sex Trafficking of Minors. Available at <http://www.justice.gov/criminal/ceos/prostitution.html>. (Last visited March 31, 2010).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Estes, R.J. and Weiner, N.A. *Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico*, University of Pennsylvania, 2002. Available at: http://www.sp2.upenn.edu/restes/CSEC_Files/Exec_Sum_020220.pdf. (Last visited March 31, 2010).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

exploited children. NCMEC operates the national missing children's hotline, which has handled more than 2.4 million calls for service. NCMEC also operates the Congressionally-mandated CyberTipline, the "911 for the Internet," which has handled more than 793,900 reports of child sexual exploitation, and operates the Child Victim Identification Program, which has reviewed more than 31 million child pornography images and videos in order to identify and rescue child victims, and has disseminated more than 22,000 reports to prosecutors in support of their cases against child sexual predators. With regard to child prostitution and trafficking specifically, the center has received 8,408 leads and reports from the public through the CyberTipline, including 1,703 reports of known missing children being prostituted.¹⁵

In June 2003, the FBI in conjunction with the Department of Justice Child Exploitation and Obscenity Section and NCMEC launched the Innocence Lost National Initiative. Combined efforts were aimed at addressing the growing problem of domestic sex trafficking of children in the United States. In the five years since its inception, the initiative has resulted in the development of 34 dedicated task forces and working groups throughout the U.S. involving federal, state and local law enforcement agencies working in tandem with U.S. Attorney's Offices.¹⁶

To date, these groups have worked successfully to rescue nearly 900 children. Investigations have successfully led to the conviction of more than 500 pimps, madams, and their associates who exploit children through prostitution. These convictions have resulted in lengthy sentences including multiple 25-year-to-life sentences and the seizure of real property, vehicles, and monetary assets.¹⁷

Federal Law

In October 2000, the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA)¹⁸ made human trafficking a federal crime and made certain victims of a severe form of human trafficking¹⁹ eligible for federally funded or administered benefits and services to the same extent as refugees. Prior to that, no comprehensive federal law existed to protect victims of trafficking or to prosecute their traffickers. The VTVPA was reauthorized and amended by the Trafficking Victims Protection Reauthorization Act of 2003.²⁰ Effective December 2003, the act extended the eligibility for federally-funded or administered benefits and services to certain family members of victims.

To be eligible for benefits and services, an individual must be certified as a victim of a severe form of human trafficking. The U.S. Department of Health and Human Services, Administration for Children & Families (ACF), Office of Refugee Resettlement (ORR) is the federal agency responsible for certifying trafficking victims. To receive certification, victims of trafficking must

¹⁵ Statement Of Ernie Allen, President & CEO, The National Center For Missing & Exploited Children, to the Congressional Human Trafficking Caucus. *Child Sex Trafficking in America*. February 18, 2010

¹⁶ Federal Bureau of Investigation. Innocence Lost National Initiative, Available at: <http://www.fbi.gov/innolost/innolost.htm>. (Last visited March 30, 2010).

¹⁷ *Id.*

¹⁸ Victims of Trafficking and Violence Protection Act of 2000. Public Law No. 106-386.

¹⁹ *Id.*

²⁰ Public Law No. 108-193.

be willing to assist with the investigation and prosecution of traffickers. In addition, they must have completed a bona fide application for a T-Visa or they must have been granted continued presence status by U.S. Citizenship and Immigration Services for the purpose of contributing to the prosecution of the traffickers.²¹

Children under 18 years of age who have been subjected to a severe form of trafficking do not need to be certified to receive benefits; ORR will issue them a letter declaring them victims of a severe form of trafficking. The ORR provides information to state and local governments and service providers on the requirements for certification, the documents that victims of severe forms of trafficking are issued, and the procedures agencies should follow in confirming eligibility for benefits.²²

Florida Law

Criminal Law

Florida law defines “prostitution” as the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.²³ Current law also provides that:

- Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge that, as a consequence of the sale or transfer, the minor will engage in prostitution, perform naked for compensation, or otherwise participate in the trade of sex trafficking, commits a felony of the first degree.²⁴
- 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, a felony of the second degree. A person commits a felony of the first degree if the offense of sex trafficking is committed against a person who is under the age of 14 or if such offense results in death.²⁵

In addition, there are a number of provisions in current law relating to penalties for crimes involving sexually related crimes and children, including, but not limited to:

- It is a second degree felony to procure a minor for prostitution or cause the minor to be prostituted;²⁶
- It is a first degree misdemeanor to commit any act which causes, tends to cause, encourages, or contributes to a child becoming a delinquent or dependent child or a child in need of services; or induces or endeavors to induce, by act, threat, command, or persuasion, a child to commit or perform any act, follow any course of conduct, or live in

²¹ U.S. Department of Health and Human Services. Administration for Children and Families. Certification for Victims of Trafficking. Available at: http://www.acf.hhs.gov/trafficking/about/cert_victims.pdf. Last visited April 1, 2010).

²² *Id.*

²³ s. 796.07, F.S.

²⁴ s. 796.035, F.S.

²⁵ s. 796.045, F.S.

²⁶ s. 796.03, F.S.

- a manner that causes or tends to cause such child to become or to remain a dependent or delinquent child or a child in need of services;²⁷
- It is a second degree felony for any person who, knowing the character and content thereof, employs, authorizes, or induces a minor to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. It is also a second degree felony for any person who, knowing the character and content thereof, to produce, direct, or promote any performance which includes sexual conduct by a child less than 18 years of age;²⁸
 - It is first degree felony for any 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 offers to sell or otherwise transfer custody of the minor, either: (1) with knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or (2) with intent to promote either the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct or the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct; and²⁹
 - A person who encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity commits a second degree felony.³⁰

Children

Dependent Child

The purposes of Chapter 39, F.S., proceedings relating to children, include, but are not limited to:

- To provide for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development; to ensure secure and safe custody; to promote the health and well-being of all children under the state's care; and to prevent the occurrence of child abuse, neglect, and abandonment.;
- To preserve and strengthen the child's family ties whenever possible, removing the child from parental custody only when his or her welfare cannot be adequately safeguarded without such removal; and
- To secure for the child, when removal of the child from his or her own family is necessary, custody, care, and discipline as nearly as possible equivalent to that which should have been given by the parents; and to ensure, in all cases in which a child must be removed from parental custody, that the child is placed in an approved relative home, licensed foster home, adoptive home, or independent living program that provides the most stable and potentially permanent living arrangement for the child, as determined by

²⁷ s. 827.04, F.S.

²⁸ s. 827.071, F.S.

²⁹ s. 847.0145, F.S.

³⁰ s. 800.04, F.S.

the court. All placements shall be in a safe environment where drugs and alcohol are not abused.³¹

Current Florida law defines a "child who is found to be dependent" as a child who is found by the court:

- To have been abandoned, abused, or neglected by the child's parent or parents or legal custodians;
- To have been surrendered to the department, the former HRS, or a licensed child-placing agency for purpose of adoption;
- To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the department, or the former HRS, after which placement, under the requirements of this chapter, a case plan has expired and the parent or parents or legal custodians have failed to substantially comply with the requirements of the plan;
- To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent or parents have signed a consent pursuant to the Florida Rules of Juvenile Procedure;
- To have no parent or legal custodians capable of providing supervision and care; or
- To be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents or legal custodians.³²

In addition, current Florida law addresses the needs of immigrant children who may be eligible for special immigrant juvenile status under federal law and who are defined as a child who:

- Has been found dependent based on allegations of abuse, neglect, or abandonment;
- Is eligible for long-term foster care;
- Will have his or her best interest served by remaining in the United States; and
- Remains under the jurisdiction of the juvenile court.³³

Child in Need of Services (CINS)

Current Florida law defines a "child in need of services" as a child for whom there is no pending investigation into an allegation or suspicion of abuse, neglect, or abandonment; no pending referral alleging the child is delinquent; or no current supervision by the Department of Juvenile Justice (DJJ) or the DCF for an adjudication of dependency or delinquency. The child must also, under this chapter, be found by the court:

- To have persistently run away from the child's parents or legal custodians despite reasonable efforts of the child, the parents or legal custodians, and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts shall include voluntary participation by the child's parents or legal custodians and the child in family mediation, services, and treatment offered by DJJ or DCF;

³¹ s. 39.001, F.S.

³² s. 39.01(15), F.S.

³³ s. 39.5075, F.S.

- To be habitually truant from school, while subject to compulsory school attendance, despite reasonable efforts to remedy the situation under ss. 1003.26 and 1003.27, F.S., and through voluntary participation by the child's parents or legal custodians and by the child in family mediation, services, and treatment offered by DJJ or DCF; or
- To have persistently disobeyed the reasonable and lawful demands of the child's parents or legal custodians, and to be beyond their control despite efforts by the child's parents or legal custodians and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts may include such things as good faith participation in family or individual counseling.³⁴

Delinquent Child

Current Florida law defines a “child who has been found to have committed a delinquent act” as a child who is found by a court to have committed a violation of law or to be in direct or indirect contempt of court, except that this does not include an act constituting contempt of court arising out of a dependency proceeding or a proceeding concerning a child or family in need of services.³⁵

Current Placement Options in Florida

Foster Care – The department licenses family foster homes to be used as placements for children who have been adjudicated dependent and cannot safely remain in their own homes. These are private residences in which children are provided 24-hour care. Such homes include emergency shelter family homes and specialized foster homes for children with special needs.³⁶

Group Homes and Shelters – The department also licenses residential child-caring agencies to be used as placements for dependent children. These placements provide staffed 24-hour care and include, but are not limited to, maternity homes, runaway shelters, group homes that are administered by an agency, emergency shelters that are not in private residences, and wilderness camps. Residential child-caring agencies do not include facilities operated by a governmental agency for the training, treatment, or secure care of delinquent youth.³⁷

State Inpatient Psychiatric Placement (SIPP) – SIPP services are provided to children under 18 years of age in an intensive residential setting and include: crisis intervention; bio-social and or psychiatric evaluation; close monitoring by staff; medication management; individual, family, and group therapy; and connection to community based services. These services are expected to be relatively short termed (less than six-months). Children must have a Diagnostic and Statistical Manual of Mental Disorders-IV (DSM-IV) diagnosis other than substance abuse, developmental disability, or autism. The youth must be expected to benefit from residential treatment and a less restrictive setting is not available. Florida currently has eleven SIPP programs.³⁸

³⁴ ss. 983.03(9) and 985.03(7), F.S.

³⁵ ss. 984.03(11) and 985.03(8), F.S.

³⁶ s. 409.175(2)(e), F.S.

³⁷ s. 409.175(2)(j), F.S.

³⁸ Advocacy Center for Persons with Disabilities, Florida's Youth Inpatient Psychiatric Program. Available at: http://advocacycenter.org/resources/disability_topic_info/category/floridas_youth_inpatient_psychiatric_program/. (Last visited April 3, 2010).

Children In Need of Services /Families in Need of Services (CINS/FINS) -CINS/FINS services are available for children and families for which services are needed but are not part of the formal delinquency or dependency systems. Currently DJJ has contracts for 28 youth shelters statewide. These shelter services are intended to be short-term, are primarily voluntary and include meeting the basic needs of the child and providing services, such as case management, and counseling. The purpose and function of the shelter is to provide respite from volatile family situations, to offer a safe place for children on the street and to work with the family for the child's safe return and improve family relationships. As a result of CINS petitions, the court may order the child to a longer stay in shelter-up to 120 days. There are 10 longer stay placements available statewide, one bed in each of 10 shelters, that have an additional youth care worker who provides one-to-one assistance and focus on the child's case plan. More intensive case management and counseling also occurs. These 10 placements are staff secure placements.^{39,40}

Physically Secure Placements - These placements are provided through independent rate agreements with adolescent/child mental health treatment facilities. However, in recent years, funding to this service has been dramatically reduced, resulting in fewer than 10 children served per year, with no room currently to house additional children. **In Florida, dependent children cannot be sheltered within a physically secure settings either long or short term.**⁴¹

Criminal Justice Placement Options – The Department of Juvenile Justice maintains detention centers which are facilities used for the placement of children pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention center or facility may provide secure or nonsecure custody.⁴² Facilities are also available for the commitment of adjudicated delinquents and range from low-risk to maximum risk residential placements.⁴³

Other States

Community-based initiatives

The Prosecution Model

Las Vegas, Nevada has one of the highest rates of teen prostitution in the U.S.,⁴⁴ and police arrest and detain hundreds of children on prostitution charges each year. In Las Vegas, arrest and detention are the primary means for linking prostituted girls to services and getting their pimps off the streets.⁴⁵ While prostitution is a misdemeanor in Nevada⁴⁶ and youths picked up for

³⁹ ss. 984.225 and 984.226, F.S.

⁴⁰ Department of Children and Families Staff Analysis and Economic Impact, SB 1700. March 4, 2010.

⁴¹ *Id.*

⁴² s. 985.03(19), F.S.

⁴³ s. 985.03(44), F.S.

⁴⁴ Las Vegas Review-Journal. *Juvenile Prostitution: Trafficking in children on increase; Las Vegas among 14 U.S. cities where problem is most severe.* March 19, 2006. Available at http://www.reviewjournal.com/lvrj_home/2006/Mar-19-Sun-2006/news/6434154.html. (Last visited April 1, 2010).

⁴⁵ The Barton Child Law and Policy Clinic. Emory University School of Law, *Commercial Exploitation of Children in Georgia: Service delivery and legislative recommendations for state and local policy makers.* January 2008. Available at: <http://childwelfare.net/activities/legislative2008/CSEC20080131.pdf>. (Last visited March 30, 2010).

⁴⁶ Nev. Rev Stat. s.201.354 (2009).

misdemeanors are not usually held in detention, juvenile justice officials believe that the practice of detaining child prostitutes is necessary to protect the girls from the dangers of the streets and to obtain information that will lead to the arrest of their pimps.⁴⁷

In 1994, in collaboration with both governmental and nonprofit social service organizations, the Las Vegas Metropolitan Police Department started a program known as S.T.O.P. (Stop Turning Out Child Prostitutes) for the purposes of identifying, locating, arresting and prosecuting any individual responsible for pandering a child and to remove the child victim from the life of prostitution and provide them with an avenue to a successful life.⁴⁸

- In Las Vegas, children involved in prostitution are picked up by police and charged with prostitution or status offenses. A special unit of vice officers who work for the S.T.O.P. program interview every child who is suspected of being involved in prostitution within a half-hour of the time the child is booked into detention to assess whether the child is a victim of commercial sexual exploitation. Vice officers have long had an agreement with the detention center to automatically detain juveniles arrested for prostitution on a “vice hold.”
- If a child is willing to leave the streets and cooperate in the prosecution of her pimp, the charge of prostitution is usually dropped and she is released from detention to a specialized program for victims of commercial sexual exploitation, such as Children of the Night⁴⁹ located in California.

Pros and Cons of the Prosecution Model

Proponents of the prosecution model argue that, while it is not ideal to prosecute young girls who have been victimized by pimps, the ability to prosecute the girls is an essential tool in the fight

⁴⁷ Las Vegas Metropolitan Police Department, Vice Section, Stop Turning Out Child Prostitutes Program (S.T.O.P.). Available at: <http://www.leg.state.nv.us/72nd/Interim/Studies/JuvJustice/exhibits/12692O.pdf>. (Last visited April 1, 2010).

⁴⁸ *Id.*

⁴⁹ Children of the Night (COTN) is the oldest and appears to be one of the most influential treatment programs in the nation that works with children who are victims of prostitution. It is a private, non-profit program for children between the ages of 11 and 17 that receives referrals from governmental and non-governmental agencies across the country and only accepts those children whom it believes are willing to leave prostitution and participate in long-term, comprehensive treatment. COTN provides services that help children testify in cases against their pimps, as well as services that help them recover from commercial sexual exploitation. COTN’s treatment services are extensive and the secure residence is a comfortable, homelike environment with 24 beds. Upon arrival, children receive fresh clothing and hygiene kits and are assigned to a bedroom with bath. They meet with a caseworker to develop an individual life plan. The caseworker coordinates medical care, psychological care, academic assessments and other social services that the child needs. The children follow a highly structured program that includes attending an on-site school, where they study individually-tailored curricula that help them reach appropriate grade levels in all subjects before they leave COTN. They attend independent living classes, 12-step substance abuse meetings, and AIDS education classes, as well as craft and poetry workshops, yoga classes and varied sporting and recreational activities.

Because COTN is a purely voluntary, private program, a child may stay at the home for as long as she needs. Many opt to stay for a year for optimum treatment. Once she turns eighteen, the youth can receive assistance in leasing apartments, getting into college or trade school, or securing jobs. All those who leave COTN are considered “alumni” and can re-contact the group for services, such as free books and school supplies while they are in college, job recommendations, or crisis intervention. Children of the Night has existed since its inception through the sole support of private contributions from individuals, corporations, and foundations and runs on an annual budget of \$2 million. Available at: <http://www.childrenofthenight.org/index.html>. (Last visited March 31, 2010).

against child prostitution. First, they believe arrest and detention is necessary to force prostituted children off the streets and link them to services. Second, they believe that the threat of prosecution, coupled with arrest and detention, is the only way to get most girls to cooperate in investigations of the pimps.⁵⁰

Opponents believe that detention sends the message that the girls are criminals deserving of punishment, rather than victims of sexual exploitation in need of help, and that the increase in the use of detention for girls over the past decade has magnified longstanding problems within detention systems:⁵¹

The underlying assumptions of the prosecution model—that detention is helpful in keeping girls safe, providing services, and prosecuting pimps—remain unproven. While advocates of the prosecution model argue that detention increases the likelihood that girls will leave the streets and accept long-term treatment, independent, objective verification of this claim is needed. Additional research is also needed to determine whether girls are truly more likely to cooperate in the prosecution of their pimps when they are criminally charged than when they are not. Finally, by focusing on prostituted children who are arrested and detained, the prosecution model may allow children outside the juvenile justice system to fall through the cracks. At-risk children, as well as children who are already involved in prostitution, but have escaped arrest, may not receive the services they need. Youth-serving agencies that have contact with these children may be reluctant to identify them out of fear of subjecting the children to prosecution. Thus, even though the prosecution model allows authorities to force children off the streets who would not leave otherwise, a lack of inter-agency collaboration might actually result in fewer, rather than more, children being served.⁵²

The Child Abuse Model

In Boston, Massachusetts, children involved in prostitution are now being treated as victims of child abuse, rather than as perpetrators of a crime. Although prostitution by a child is still a crime in Massachusetts,⁵³ instead of pursuing prosecutions of these children, the District Attorney's Office is now working with more than 30 community-based and government agencies, including the state's child protective agency, juvenile justice services, law enforcement, health care

⁵⁰ The Barton Child Law and Policy Clinic. Emory University School of Law, *Commercial Exploitation of Children in Georgia: Service delivery and legislative recommendations for state and local policy makers*. January 2008. Available at: <http://childwelfare.net/activities/legislative2008/CSEC20080131.pdf>. (Last visited March 30, 2010).

⁵¹ Francine T. Sherman, Annie E. Casey Foundation, *Detention Reform and Girls, 13 Pathways To Juvenile Detention Reform*, p. 10 (2005). Available at http://www.aecf.org/upload/publicationfiles/jdai_pathways_girls.pdf. (Last visited April 1, 2010).

⁵² The Barton Child Law and Policy Clinic. Emory University School of Law, *Commercial Exploitation of Children in Georgia: Service delivery and legislative recommendations for state and local policy makers*. January 2008. Available at: <http://childwelfare.net/activities/legislative2008/CSEC20080131.pdf>. (Last visited March 30, 2010).

⁵³ Mass. Gen. Laws ch 272, s. 53A (2007).

providers and interested non-profit groups to create a model for dealing with prostituted children that is based on the model used for child abuse victims.⁵⁴

The Teen Prostitution Prevention Project (TPPP) of Suffolk County was launched in 2004 as a response to the growing problem of girls and young women lured into prostitution by adults. Drawing on a multidisciplinary model that has been successful in helping other victims of child abuse, the TPPP recognizes that collaboration between agencies is the key to successfully diverting prostituted youth away from those who would exploit them.⁵⁵

A memorandum of understanding signed by various Massachusetts from all branches of government and social service calls for the rapid referral of teen exploitation to the Department of Social Services - and subsequently to the district attorney's office - akin to the procedure for suspected neglect or abuse of a child. It also calls for treatment and services for the victim that are specifically intended to secure the victim's physical and emotional well-being.

As a result, when prosecutors receive a child prostitution case, they treat the child as a victim/witness rather than as a defendant. Prosecutors work as part of a multidisciplinary team to provide services to the child and, if the child is willing, to build a case against her pimp. Because they work from a child abuse model, they do not use threats of criminal charges to pressure the child to cooperate in the prosecution of her pimp or withhold services until she does.⁵⁶

Pros and Cons of the Child Abuse Model

One benefit that is already apparent in Boston is better identification of children involved in prostitution. By agreeing to treat prostituted children as victims rather than defendants, the District Attorney's Office appears to have strengthened its relationship with child welfare agencies. In 2007, it was reported that this new collaboration has led to a dramatic increase in the number of child abuse cases involving prostituted teens. Before the collaborative initiative began, the state social services agency would rarely send cases to the district attorney because they were worried the girls would be prosecuted.⁵⁷

One challenge of the child abuse model is that it can only serve children who want help. For the child abuse model to work, therefore, it requires strong education and outreach efforts, and a

⁵⁴ The Barton Child Law and Policy Clinic. Emory University School of Law, *Commercial Exploitation of Children in Georgia: Service delivery and legislative recommendations for state and local policy makers*. January 2008. Available at: <http://childwelfare.net/activities/legislative2008/CSEC20080131.pdf>. (Last visited March 30, 2010).

⁵⁵ Suffolk County District Attorney's Office. *Teen Prostitution Prevention Project Named Among Top 50 Innovative Government Programs*. April 4, 2007. Available at <http://www.mass.gov/dasuffolk/docs/4.4.07C.html>. (Last visited April 2, 2010).

⁵⁶ In Boston, it is the filing of a mandatory child abuse reports that is the gateway to services for children victimized by commercial sexual exploitation. Like Florida, Massachusetts requires the reporting of suspected child abuse. Until recently, however, mandatory reporters were not filing reports when they suspected that a child was being prostituted. One of TPPP's ongoing initiatives has been to educate mandated reporters that prostitution creates "physical or emotional injury... which causes harm or substantial risk of harm to the child's health or welfare..." and thus is child abuse. See Mass. Gen. Laws ch. 119, s. 51A.

⁵⁷ The Barton Child Law and Policy Clinic. Emory University School of Law, *Commercial Exploitation of Children in Georgia: Service delivery and legislative recommendations for state and local policy makers*. January 2008. Available at: <http://childwelfare.net/activities/legislative2008/CSEC20080131.pdf>. (Last visited March 30, 2010).

staff-secured safe house and treatment facility.⁵⁸ Because children involved in prostitution are not brought to services through arrest, they must be brought to services through education and outreach. The process of removing the pimp's psychological hold on the child must take place on the streets, rather than in a holding cell.⁵⁹

Another concern with the child abuse model is that it may hinder the prosecution of pimps. Some argue that the threat of being prosecuted for prostitution is the only thing that will motivate many children to testify against their pimps. However, because the Boston model is so new, it may be too soon to know whether treating child prostitutes as victims rather than as offenders really results in fewer successful prosecutions of pimps.⁶⁰

The Hybrid Model

San Francisco, like Las Vegas, uses arrest and detention as a way to remove prostituted children from the dangers of the street, link them to services, and build a case against their abusers. San Francisco differs, however, in that authorities have contracted with specialized community-based organizations to assess and counsel children who have been involved in prostitution while they are still in custody and upon their release. Because San Francisco relies on arrest and detention to bring children into the system, and couples that practice with a wide range of victim-centered services, it is referred to as a hybrid model.⁶¹

In the past, San Francisco children who were arrested on prostitution charges were only detained if they had committed other crimes or violated their probation. In 2003, when a young victim of prostitution was murdered on the street after being released by police, authorities instituted a new protocol. Today, all children arrested on prostitution are detained "for their own safety." Authorities use a procedure of "informal probation" by which they drop the charges against the child in exchange for the child's agreement to be held for up to 90 days and enter into probation. As part of her probation, the child must participate in gender-specific services while in custody and after release⁶² that, according to the probation department, are "designed both to hold girls accountable for their actions but also to help them heal."

In contrast to the Las Vegas detention model, this more victim-centered or "survivor-focused" model in San Francisco relies on peer counselors who are former prostitutes, rather than vice officers, to assess and counsel the girls while they are detained⁶³ and children who are victims of commercial sexual exploitation continue to work with SAGE upon their release.

⁵⁸ *Id.* In keeping with the child abuse model, Boston's residential treatment facility will not be locked, but located far from the city with electronically monitored entrances and exits and round-the-clock staff who can discourage the children from leaving when the urge to run strikes.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² One such organization is Standing Against Global Exploitation (SAGE), a non-profit group founded by a prostitution survivor, staffed by prostitution survivors, and dedicated to serving victims of commercial sexual exploitation.

⁶³ In addition to its in-custody program, SAGE offers a number of other programs for prostituted youth, including an intensive case management program. Each girl works with a case manager to develop an individualized service plan with measurable objectives. The girls work with peer counselors in individual and group sessions, addressing such issues as sexual exploitation, relationships, neighborhood safety, substance abuse, anger management, vocational preparation, and communication. GED and computer training is available. Most girls participate in the program for between 6 and 14 months.

The Benefits and Drawbacks of the Hybrid Model

San Francisco's hybrid model has many of the same drawbacks as the detention model used in Las Vegas. As mentioned earlier, detention of children who have been used by adults in the sex trade punishes the victim. The San Francisco model mitigates this problem by inserting a strong therapeutic element into the detention facility. The addition of these wraparound services may make San Francisco's "hybrid" model better-suited to meeting the needs of child victims of prostitution than Las Vegas' prosecution model.

The San Francisco model, however, still struggles with the same problem faced in Boston through the use of the child abuse model; that of identifying child victims of prostitution who are not brought to attention through arrest.

Legislative initiatives

Very few states⁶⁴ have enacted legislation relating to the sexual exploitation of children. However, New York has in recent years adopted two specific pieces of legislation designed to better protect and serve children who are victims of sexual exploitation:

- In June 2007, the New York State Legislature made many changes to New York law relevant to the commercial sexual exploitation of children, including defining the crime of sex trafficking without regard to the age of the victim; requiring anyone convicted of sex trafficking or attempting sex trafficking to register as a sex offender; requiring notification of social services for assessment if the victim is under the age of 18; and making victims of sex trafficking eligible for victim compensation funds. The legislation also created an interagency task force on human trafficking.⁶⁵
- In June 2008, the New York Legislature enacted what is known as the Safe Harbor Act. The Safe Harbor Act would allow for the presumption that a person under 16 years of age who is charged as a juvenile delinquent for a prostitution offense is a severely trafficked person. This presumption permits the child to avoid criminal charges of prostitution and instead be considered a "person in need of supervision." The statute also provides support and services to sexually exploited youth who are under the age of 18. These services include safe houses, crisis intervention programs, community-based programs, and law-enforcement training to help officers identify sexually exploited youth.⁶⁶

SAGE also offers medical screening, vocational rehabilitation, a transgender program, and an arts collective and creative writing program.

In 2005, SAGE opened a six-bed safe house to provide prostituted girls, ages 12 through 17, with a "safe, nurturing environment that specializes in trauma recovery." SAGE accepts referrals from juvenile probation, as well as from the child protective services' shelter, family courts, defense attorneys and others. Girls must be "interested in escaping prostitution."

⁶⁴ Illinois and California have enacted legislation related to the protection of children who are victims of sexual exploitation.

⁶⁵ The Barton Child Law and Policy Clinic. Emory University School of Law, *Commercial Exploitation of Children in Georgia: Service delivery and legislative recommendations for state and local policy makers*. January 2008. Available at: <http://childwelfare.net/activities/legislative2008/CSEC20080131.pdf>. (Last visited March 30, 2010).

⁶⁶ *Id.*

While child advocates have praised New York's Safe Harbor Act for its recognition of the specialized service needs of commercially sexually exploited children, critics allege that the statute is too narrowly drawn and will not cover all child victims of sexual exploitation, and that the commercial sexual exploitation of children has not been destigmatized by removing it from the definition of prostitution altogether. Also, while allowing courts to classify these children as persons in need of supervision rather than as delinquents, they can still be arrested and suffer the ill-effects of secure detention before that change in status is made.⁶⁷ Although the Safe Harbor legislation was enacted in June 2008, the April 1, 2010 effective date means it is too early to tell how effective it will be.

III. Effect of Proposed Changes:

The bill creates the Florida Safe Harbor Act in s. 39.001(4), F.S., to provide special care and services to all sexually exploited children in the dependency process.

Legislative findings, intent, and establishment of goals for sexually exploited children – The bill provides that it is the intent of the legislature that children who are victims of sexual exploitation should be cared for through the dependency system rather than the delinquency system and that the state shall provide dependency services to all children not receiving comparable services under the federal Trafficking Victims Protection Act. While the language is not substantive, lines 69-75 of the bill state:

Although minors are by law unable to consent to sexual activity, they are most often treated as perpetrators of crime rather than victims. Moreover, the historical treatment of such children as delinquents has too often resulted in the failure to successfully prosecute the trafficker, who is the true wrongdoer and threat to society.

The Florida Department of Law Enforcement (FDLE) reported there should be a point of clarification with respect to the treatment of children engaged in sexual activity and deemed delinquent. A review of Computerized Criminal History (CCH) data for 2007, 2008, and 2009 reflects very few arrest events involving offenders under 16 with respect to any unlawful acts under 796.07(2).⁶⁸ The data reflected a total of 20 arrest events for 2007, 12 arrest events for 2008, and 22 arrest events for 2009 for this demographic. This represents approximately 0.4% of total arrest events (all ages) under this statute for 2007; 0.2% for 2008; and 0.5% for 2009.

These statistics are merely arrest events. Actual prosecutions of minors under s. 796.07, F.S., are most likely significantly lower. While improvement in the handling of such children may be warranted, it is doubtful that the failure to successfully prosecute traffickers is a result of the treatment of these children as delinquents. Traffickers can be prosecuted under the sexual battery statute and/or the prostitution statute as currently written.⁶⁹

Lines 80-81 of the bill state that it is a goal of the legislature to provide for the treatment of sexually exploited children as dependent children rather than as delinquents. The prostitution of

⁶⁷ *Id.*

⁶⁸ s. 796.07(2), F.S., specifies unlawful acts relating to prostitution.

⁶⁹ Florida Department of Law Enforcement, Analysis for SB 1700, February 24, 2010.

children occurs in a variety of contexts, including parents advertising and prostituting their children over the Internet, runaway and homeless children on city streets being recruited by pimps or engaging in “survival sex,” and drug pushers forcing addicted teenagers to prostitute themselves as a condition for receiving drugs or a place to stay. But also, acting on their own initiative or in the company of friends, young people may engage in casual or even frequent prostitution for money or for adventure.⁷⁰ Children in the latter category may need intervention and services, but not as dependent children.

Definitions – The bill amends a number of definitions in chapter 39, F.S.:

- The term “child who is found to be dependent” is amended to include children that have been sexually exploited and have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care. The effect of this change will place children meeting those criteria within the dependency system. This may be a redundant change due to the fact that currently any child who is found by the court to have “no parent or legal custodian capable of providing supervision and care” may be adjudicated dependent by the court.
- The term “sexual abuse of a child” is amended so that sexual exploitation includes the act of a child offering to engage in or engaging in prostitution or sexual acts. The definition is also amended to include participation in sex trafficking as an act of sexual exploitation of a child. FDLE reported concerns relating to proposed changes to this definition:
 - Including "the act of a child offering to engage in or engaging in prostitution" (with no restrictions, modifications or limitations) removes discretion from law enforcement to treat each case individually and brings all prostitution activity by a child into the "protected status" for sexual exploitation (see lines 218-220 of the bill).
 - As such, the bill ignores the reality that some “children” choose to engage in prostitution at no urging of others, and are not "exploited" by another person. Under the bill, a child who independently engages in prostitution will receive the same protections as a child forced into that behavior via exploitation by another and will not be treated as delinquent or criminal. As a result, the bill could have the unintended consequence of promoting child exploitation by “pimps.” Since the child's encounter with police will result in a non-criminal-justice response, the "pimp" or other exploiter is insulated from further criminal justice investigation or scrutiny.⁷¹

Children are adjudicated dependent as a result of action or inaction on the part of a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in ch. 39, F.S. Including "the act of a child offering to engage in or engaging in

⁷⁰ Finkelhor, D. and Ormrod, R. *Delinquency Prevention. Prostitution of Juveniles: Patterns From NIBRS*, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. June 2004. Available at: <http://www.ncjrs.gov/pdffiles1/ojjdp/203946.pdf>. (Last visited April 5, 2010).

⁷¹ Florida Department of Law Enforcement, Analysis for SB 1700, February 24, 2010.

prostitution” in the definition of “sexual abuse of a child” removes the “perpetrator” and creates an inconsistency in the Florida dependency system.

Delivery to a short-term safe house – The bill requires a law enforcement officer who takes a child alleged to be dependent into custody to deliver a sexually exploited child to a short-term safe house if one is available. The Department of Juvenile Justice (DJJ) reported that this appears to eliminate the option of handling any child as a delinquency referral when the child has a previous delinquency history.⁷²

Shelter placement – The bill creates a rebuttable presumption that placement of a sexually exploited child in a short-term safe house is necessary. The bill requires DCF, at the hearing to continue shelter care, to establish probable cause that the child has been sexually exploited, and that placement in a short-term safe house is the most appropriate placement. The bill also adds the fact that a child has been sexually exploited to the list of conditions which show reasonable efforts by DCF to prevent or eliminate the need for removal of the child from the home. (Similar changes are made to provisions relating to disposition hearings).

The change related to reasonable efforts would appear to mean that a sexually exploited child would be placed in shelter regardless of any additional circumstances in his or her home.

Safe-harbor placement – The bill creates a new section of law relating to safe-harbor placement. The section requires any child 6 years of age or older who has been found to be a victim of sexual exploitation to be assessed for placement in a safe house, and if such placement is determined to be appropriate, the child shall be so placed, if a safe house is available. The section also provides for:

- Criteria to be included in the initial assessment for placement;
- Information relating to the placement to be included in each judicial review;
- Special permanency teams to be established to work with these children;
- Specific data to be maintained related to referrals for safe house placement;
- An annual report to the legislature related to placement of sexually exploited children;
- The creation of a special funding category in the General Appropriations Act;
- A proposed distribution formula for funds appropriated for safe houses; and
- Specified uses of safe house funding.

Safe harbor for sexually exploited children – The bill also creates a new section of law relating to safe harbor for children who are victims of sexual exploitation. Specifically, the section:

- Requires safe houses to be established by a not-for-profit or local government entity under a contract with the department or a community based care lead agency;
- Requires DCF to enter into an interagency agreement with DJJ to identify agency responsibilities for referrals, placement, service, coordination, terms and conditions, and performance outcomes;

⁷² Department of Juvenile Justice, 2010 Legislative Session Bill Analysis, HB 535 (At the time of the analysis HB 535 was identical to SB 1700). February 8, 2010.

- Creates a definition for “child advocate” to mean an employee of a short term safe house who has been trained to work with and advocate for sexually exploited children;
- Creates definitions for the terms “safe house” and “short-term safe house.” Both facilities would be required to be licensed by DCF as a child-caring agency under s. 409.175, F.S. A “safe house” differs from a “short-term safe house” in that the former has gender specific and separate living quarters for sexually exploited children who have been adjudicated dependent or delinquent and need to reside in a secure facility with 24-hour-awake staff.
- Creates a definition for the term “sexually exploited child” to mean a dependent child who has suffered sexual abuse and who is ineligible for services under the federal Trafficking Victims Protection Act;
- Requires DCF, subject to appropriations, to address the needs of sexually exploited children and to ensure that preventative services, including a short-term safe house, is available to children in the district. The section directs DCF or a lead agency to contract with an appropriate not-for-profit agency with experience working with sexually exploited children to operate the short-term safe house. The section also requires DCF to contract with an appropriate not-for-profit agency to operate at least one statewide long term safe house to provide safe and secure long-term housing and specialized services for sexually exploited children throughout the state.
- Provides for the transfer of all casework responsibilities to the entity providing the safe house services;
- Does not prohibit the safe house provider from billing Medicaid for services rendered, from contracting with local school districts for services, or from obtaining funding from additional sources;
- Provides that the lead agency, not-for-profit corporation, or local government entity has the legal authority for children in a safe house to enroll the child in school, cosign for loans and insurance; sign for medical care; and sign for a driver’s license;
- Provides DCF with rule-making authority to implement the provisions of the section; and
- Provides, to the extent that funding is available, for training for local law enforcement training.

The meaning of **secure** long-term housing as used in the bill is unclear. The department reported:

The bill is very explicit in stating that safe houses must be secure without providing an exact definition of what is meant by that terminology. Proposed 409.1678 (2) (b) states that “a safe house must have set aside gender-specific, separate and distinct living quarters and must be a secure facility with 24-hour awake staff”. Currently, the department does not operate such facilities if safe and secure is defined as “a physically restrictive facility for the temporary care of children...” which is part of the definition used in ch. 985.03(46) for a secure detention center or facility. Without a complete definition of “secure” in this proposed legislation, it is reasonable to conclude that restrictive movement or confinement to a specific facility is what is meant. 24 hour-awake staff is not currently part of the department’s operations for children unless they are housed due to mental health or substance abuse issues. **In addition, children who are**

adjudicated dependent cannot be sheltered within a physically secure setting either long or short term in Florida.

In addition, a recent Florida District Court of Appeal opinion held that a dependent child cannot be placed in secure detention for his or her own best interest. This ruling would suggest that safe house placement would not be an option for these children.⁷³

The permissive language relating to law enforcement training is problematic. It is generally agreed upon that one of the most important facets of efforts to successfully work with children who are victims of sexual exploitation is adequate training of all disciplines involved:

Lois Lee, founder and president of Children of the Night, endorses the Las Vegas prosecution model and works closely with Las Vegas police and juvenile probation. However, while she believes detention is an appropriate way to get children off the streets and improve prosecution of pimps, she notes that the **model only works if the police are specially trained**, honest and compassionate—as she believes is the case in Las Vegas—and the charge of prostitution is eventually dropped, and the child linked to services. In her words, COTN is the “carrot” and law enforcement is the “stick” that leads to the arrest of “vile pimps that force the children to prostitution for food and a place to sleep.”⁷⁴

A model state law drafted by the Freedom Network⁷⁵ includes the following provision: **Training** shall be made available in all relevant local and state agencies, including, but not limited to, healthcare, hospital, law enforcement, labor, agriculture, housing, and social service, to educate officials on:

- The phenomenon of human trafficking, state and federal laws on human trafficking, the rights and needs of trafficked persons, and the tools necessary to provide effective services to trafficked persons;
- How to recognize and identify trafficking victims;
- Methods for protecting trafficking victims and advising them of their rights; and
- Procedures and techniques for handling specialized needs of victims who may face cultural, language and other barriers that impede ability to request and obtain available services.⁷⁶

⁷³ *J.J. v. State of Florida*. 2010 WL 1222667 (Fla.App. 3 Dist.).

⁷⁴ The Barton Child Law and Policy Clinic. Emory University School of Law, *Commercial Exploitation of Children in Georgia: Service delivery and legislative recommendations for state and local policy makers*. January 2008. Available at: <http://childwelfare.net/activities/legislative2008/CSEC20080131.pdf>. (Last visited March 30, 2010).

⁷⁵ The Freedom Network USA established in 2001 is a coalition of 25 non-governmental organizations that provide services to, and advocate for the rights of, trafficking survivors in the United States. Their mission is to ensure that trafficked persons are treated as victims and not criminals, are able to have full access to justice, including the right to full compensation and restitution from the traffickers, and are provided with access to linguistically-appropriate and culturally-sensitive, victim-centered social, mental health, medical, legal, educational, vocational and other services and to increase public awareness of the crime of trafficking through education, research, **training** and community outreach and organizing for the purpose of preventing trafficking and supporting the rights of trafficked persons.

⁷⁶ State Model Law on Protection for Victims of Human Trafficking. Available at: <http://www.urbanjustice.org/pdf/publications/FNStateModelLaw.pdf>. (Last visited April 3, 2010).

Prohibitions related to prostitution – The bill amends provisions relating to prostitution making certain acts related to prostitution unlawful only if committed by any person 16 years of age or older. The intent behind “16 years of age” is unclear.

In addition, FDLE reported that because this change makes certain acts related to prostitution unlawful only if committed by any person 16 years of age or older, criminal statutes beyond prostitution could be potentially impacted by setting up defense arguments that a person under 16 is not capable of willful intent in cases of any number of other more serious crimes. The use of 16 years of age as the break point for willful intent is inconsistent with other Florida statutory provisions.⁷⁷

Juvenile delinquency – The bill prohibits juvenile probation officers and the state attorney from filing a petition for delinquency for an act related to prostitution unless the child has been previously adjudicated delinquent.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

DJJ and FDLE report there will be no fiscal impact on their agencies.

According to DCF, while the provision of services and establishment of safe houses is dependent upon funding being made available for those purposes, the fiscal impact on

⁷⁷ Florida Department of Law Enforcement, Analysis for SB 1700, February 24, 2010.

DCF and the community based care lead agencies to implement the bill would be substantial. Provisions of the bill do not provide enough specific information to determine an estimated impact; there is no information relating to facility size, bed capacity, or staffing requirements and there is no information on whether a new facility must be built or purchased or an existing facility has been identified for possible use.

Using an estimate of \$350-\$400 per bed per day (which is known for other DCF residential facilities) for the safe homes that would be established, the following two examples can be used to predict the cost of the short-term safe homes and the statewide safe home:

Short Term Safe-Homes

- 20 short-term safe homes (one in each DCF circuit), each of which has 3 beds. At \$350-\$400 per day per bed, an expected estimated cost would be **approximately \$7.7-\$8.7 million.**
- 7 short-term safe homes (1 in each DCF region), each of which has 3 beds. At \$350-\$400 per bed per day, an expected cost would be approximately **\$2.7-\$3.0 million.**

Statewide Long Term Safe-Home

- One residence with 24 beds at \$350-\$400 per bed per day, an expected cost would be approximately **\$3.0-\$3.5 million.** (A similar 24 bed facility operated by Children of the Night in California has an annual operating budget of \$2 million and is privately funded).

VI. Technical Deficiencies:

There are a number of technical deficiencies and inconsistencies in the bill, including, but not limited to:

- Lines 92-99 of the bill create legislative intent for the state to provide services to **all** sexually exploited children in the state who are not otherwise receiving comparable services, such as those under the federal Trafficking Victims Protection Act. Benefits and services under the federal act are for certified trafficking victims who are non-U.S. citizens and their children who have been issued a letter by ORR declaring them victims of a severe form of trafficking. It is unclear how these children will come to the attention of law enforcement or social services and, if they do, whether they will automatically be placed in a safe house according to the provisions of the bill.
- Lines 212-215 of the bill include an additional category of children to be included in the definition of “child who is found to be dependent.” This creates a redundancy since any child who has no parent or legal custodians capable of providing supervision and care is already included in the definition.
- Lines 238-241 of the bill require a law enforcement officer who takes a sexually exploited child into custody to deliver the child to a short-term safe house if one is

available. No alternative is provided for cases in which no safe house is available or the safe house is distant from the county where the child was taken into custody.

- Lines 262-264 of the bill are permissive relative to placement of a child awaiting the shelter hearing. This conflicts with required placement in lines 238-241.
- Lines 284-286 and 292-294 create a rebuttable presumption that if a child is alleged to have been sexually exploited, placement in a short-term safe house is necessary. This conflicts with lines 238-241 which does not reference “alleged” victimization. Also these changes occur in s. 39.407, F.S., relating to placement in a shelter, which is time limited placement. This time frame should be the same in the newly created section relating to short-term safe houses; however there is no mention of limitation on length of stay in a short-term safe house.
- Lines 445-448 of the bill create a rebuttable presumption that a child found to be a victim of sexual exploitation be committed to a safe house. This language appears to be inappropriately placed in the middle of a paragraph dealing with court approved visitation. Use of the term “committed” when referring to placement in a safe house is inappropriate in the dependency context.
- Lines 474-489 of the bill, relating to assessment of a child who has been found to be a victim of sexual exploitation, is unclear. The child is to be assessed by the department or its agent for placement in a safe house. If such placement is determined to be appropriate, the child shall be placed in a safe house, if available. If the department is performing the assessment, it would have to be done by a child protective investigator (CPI). It is unclear if this is part of a child protective investigation, although it would appear to be a different assessment that would require skills other than those typically of CPIs. There is no reference to a secondary placement if a safe house is unavailable.
- Lines 505-508 of the bill provide that the department is not prohibited from placing children who are not victims of sexual exploitation in a safe house. It is unclear who these children would be and why it would be appropriate to house them with children who have been victims of sexual exploitation.
- Lines 509-533 of the bill require data collection by the department relating to safe house placements. It is unclear whether this data is to be captured in the Florida Safe Families Network (FSFN) system. Line 530, and other lines throughout the bill, requires the department to present this information by district. The department is currently organized into 20 circuits and 7 regions – there are no districts.
- Lines 592-593 of the bill require services to be provided in a secure residential setting. The meaning of this term is unclear.
- Lines 593-597 of the bill require services to be provided by a not-for-profit or local government entity under contract with the department or by a lead agency. These contracts are required to provide an identified number of children with a full array of services for a fixed price. This model differs from the usual “no eject, no reject” contracts provided of other DCF providers.
- Lines 609-614 of the bill create a definition for the term “child advocate” who is an employee of a short-term safe house. Since this individual is not a party to a dependency proceeding it would be impossible for him or her to serve as a liaison

with the court. It is unclear why such an advocate would be necessary in a short-term safe house and not a safe house. The responsibilities of the advocate may be duplicative of those of a guardian ad litem.

- Lines 615-618 of the bill define a safe house as living quarters for sexually exploited children who have been adjudicated dependent or **delinquent**. This appears to conflict with the goal of the bill to treat all sexually exploited children as dependent.
- Lines 619-622 of the bill require safe houses to be operated **by** a licensed family foster home or a residential child-caring agency. It is unclear whether “by” should be “as.”
- Lines 623-625 of the bill require safe houses to be licensed residential child-caring agencies and be accredited. There is currently no requirement for licensed residential child-caring agencies to be accredited, nor does the bill specify what accrediting entity must be used.
- Lines 630-633 of the bill provide a define a “sexually exploited child” as a dependent child who has suffered sexual abuse and is ineligible for benefits under the federal Trafficking Victims Protection Act. Children who are defined as sexually exploited should include children who are victims of certain acts and crimes, and not based on their eligibility for services.
- Lines 634-635 of the bill defines a short-term safe house as a shelter operated by a licensed family foster home or licensed residential child-caring agency. Foster parents are not typically in the business of operating a shelter and providing services.
- Lines 648-650 of the bill require that sexually exploited children be provided preventive services including short-term safe houses. It is unclear how safe houses would qualify as “preventive” services.
- Lines 736-742 of the bill provide authority to the entity providing safe house services to enroll the child in school, sign for a driver’s license, cosign loans and insurance, sign for medical treatment and authorize other such activities. This language is not specific as to what kinds of medical treatment may be authorized without parental permission, and it is unclear why a child who is placed in a secure safe house would need a driver’s license. It is also unclear what entity would assume the liability of cosigning a loan for a minor.
- Lines 853-856 of the bill creates a presumption that a delinquency petition not be filed in cases involving a violation of s. 796.07(3), F.S. unless the child has previously been adjudicated delinquent. This appears to be an incorrect citation since s. 796.07(3), F.S., relates to trial testimony, rather than unlawful acts.

VII. Related Issues:

There are a number of provisions of the bill relating to community based care lead agencies. Since these agencies operate under contract with the department, it is unlikely they would be willing or able to take on the additional responsibilities in the bill without amending their contracts and increasing their payments accordingly.

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.
