

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 851 Human Trafficking  
**SPONSOR(S):** Fitzenhagen  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 540

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Bruno	Hall
2) Appropriations Committee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Human trafficking is modern-day slavery involving exploitation of an adult by using fraud, force, or coercion, or exploitation of a minor. The International Labor Organization, the United Nations agency charged with addressing labor standards, employment, and social protection issues, estimates that as many as 27 million adults and children are subject to human trafficking at any given time. The federal government has estimated that the number of persons trafficked into the United States each year ranges from 14,500 to 17,500. Human trafficking may be for commercial sexual activity or labor, commonly in areas such as domestic work, agriculture, traveling sales, and food service.

HB 851 responds to the human trafficking problem through a wide range of policies. Specifically, the bill:

- Requires a public lodging establishment owner or operator to require managing employees and employees who are reasonably expected to routinely interact with guests to complete a human trafficking educational program covering identification, prevention, and reporting within 30 days of hire or by January 1, 2020.
- Requires a public lodging establishment owner or operator to implement an employee protocol or code of conduct to prevent, detect, and report suspected human trafficking by January 1, 2020.
- Authorizes the Division of Hotels and Restaurants to impose an administrative fine of up to \$1,000 per day on a public lodging establishment that is not in compliance with the education or protocol requirements.
- Requires each certified law enforcement officer to complete training on identifying and investigating human trafficking, either during basic recruit training or as continuing education, before July 1, 2022.
- Exempts kidnapping from the list of disqualifying offenses for human trafficking victim expunction, allowing a person to expunge a kidnapping conviction if he or she proves by a preponderance of the evidence that he or she was a victim of human trafficking during the commission of the crime.
- Creates the Soliciting for Prostitution Registry, and requires a clerk of court to forward the criminal history record of any person convicted of soliciting prostitution, assignation, or lewdness to the Florida Department of Law Enforcement (FDLE) for inclusion in the registry.
- Requires the Department of Children and Families, in consultation with FDLE and the Attorney General, to establish a direct-support organization to develop community and private sector resources and serve as a liaison with state agencies, other state governments, and the public and private sectors in funding inpatient care to human trafficking victims.

The bill will have an indeterminate fiscal impact on state government.

The bill provides an effective date of July 1, 2019.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Human Trafficking

Human trafficking is modern-day slavery involving exploitation of:

- An adult by using fraud, force, or coercion, or
- A minor.<sup>1</sup>

The International Labor Organization, the United Nations agency charged with addressing labor standards, employment, and social protection issues, estimates that as many as 27 million adults and children are subject to human trafficking at any given time.<sup>2</sup> The federal government has estimated that the number of persons trafficked into the United States each year ranges from 14,500 to 17,500.<sup>3</sup>

Human trafficking may be for:

- Commercial sexual activity; or
- Labor, commonly in areas such as domestic work, agriculture, traveling sales,<sup>4</sup> and food service.<sup>5</sup>

##### *Hotels and Motels*

Human trafficking schemes often rely on hotels and motels for their operations; for example, a hotel or motel may serve as a site for commercial sexual activity, board a traveling sales crew, or use a housekeeping subcontractor staffed by human trafficking victims.<sup>6</sup> The United States Department of Homeland Security (DHS) has noted that hotel and motel employees are often in the best position to see potential signs of human trafficking.<sup>7</sup> Housekeeping and maintenance staff access the rooms, while front-desk employees, valets, and bellhops interact with guests and see who comes in and out.

Hotels and motels can aid in preventing human trafficking by:

- Knowing the signs of human trafficking.
- Implementing procedures to report human trafficking.
- Partnering with agencies that provide services to human trafficking victims.
- Training employees.<sup>8</sup>

DHS has identified the following human trafficking indicators that housekeeping, maintenance, and other staff accessing hotel or motels rooms may encounter:

- Constant use of the “Do Not Disturb” sign.
- Requesting services such as additional towels and linens but denying staff entry into the room.
- Refusing cleaning service for multiple days.

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<sup>1</sup> S. 787.06, F.S.

<sup>2</sup> U.S. Department of State, *The 2013 Trafficking in Persons (TIP) Report* (June 2013), <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm> (last visited Mar. 21, 2019).

<sup>3</sup> Sonide Simon, *Human Trafficking and Florida Law Enforcement*, Florida Criminal Justice Executive Institute, pg. 2 (Mar. 2008), <http://www.fdle.state.fl.us/Content/getdoc/e77c75b7-e66b-40cd-ad6e-c7f21953b67a/Human-Trafficking.aspx> (last visited Mar. 21, 2019).

<sup>4</sup> Traveling sales crews often sell products such as magazine subscriptions, trinkets, or cleaning products. National Human Trafficking Hotline, *Sales Crews, Peddling & Begging Rings*, <https://humantraffickinghotline.org/labor-trafficking-venuesindustries/sales-crews-peddling-begging-rings> (last visited Mar. 21, 2019).

<sup>5</sup> Brittany Anthony, Jennifer Kimball Penrose, and Sarah Jakiel, *The Typology of Modern Slavery: Defining Sex and Labor Trafficking in the United States*, Polaris (Mar. 2017), <https://polarisproject.org/typology-report> (last visited Mar. 21, 2019).

<sup>6</sup> Polaris, *Human Trafficking and Hotels & Motels*, <https://polarisproject.org/human-trafficking-and-hotels-motels> (last visited Mar. 21, 2019).

<sup>7</sup> Blue Campaign, *Hospitality Toolkit*, U.S. Department of Homeland Security, <https://humantraffickinghotline.org/labor-trafficking-venuesindustries/sales-crews-peddling-begging-rings> (last visited Mar. 21, 2019).

<sup>8</sup> *Id.*

- Excessive cash in the room.
- Smell of bodily fluids and musk.
- Presence of multiple computers, cell phones, pagers, credit card swipes, or other technology.
- The same person reserving multiple rooms.
- People leaving the room infrequently, not at all, or at odd hours.
- Children's items in the room with no children registered as guests.
- People loitering in the hallways or appearing to monitor the area.
- Excessive amounts of alcohol or illegal drugs in the room.
- Evidence of pornography.
- Minors left alone in the room for long periods of time.
- Excessive number of people staying in the room.
- Extended stay with few or no personal belongings.
- Provocative clothing and shoes.
- Constant flow of men into the room at all hours.
- Excessive amounts of sex paraphernalia, such as condoms and lubricant, in the room.
- Merchandise, luggage, mail packages, purses, and wallets with different names in the room.<sup>9</sup>

Signs of human trafficking that front-desk employees, valets, and bellhops may encounter include:

- A guest appears distressed or injured.
- The same person reserving multiple rooms.
- Few or no personal items when checking in.
- Room paid for with cash or a pre-loaded credit card.
- Excessively using hotel computers for adult-oriented or sexually explicit websites.
- Patrons not forthcoming about full names, home address, or vehicle registration when registering.
- A minor taking on adult roles or behaving older than his or her actual age, such as by paying bills or requesting services.
- A guest appears with a minor that he or she did not come with originally.
- Rentals of pornography when children are staying in the room.
- People dropped off at the hotel or visit repeatedly.
- People leaving the room frequently, not at all, or at odd hours.
- A minor with a patron late at night or during school hours.
- Guests have no identification when checking into the room.
- The room is rented hourly, less than a day, or for a long-term stay that does not appear normal.
- Guests request information or access to adult services or the sex industry.
- The room rented has fewer beds than guests.
- People selling items to or begging from guests or staff.
- People enter or exit through the side or rear entrances instead of the lobby.
- The guest's car is regularly parked backwards to conceal the license plate.<sup>10</sup>

The Florida Department of Business and Professional Regulation's Division of Hotels and Restaurants (Division) regulates public lodging establishments,<sup>11</sup> defined as hotels, motels, nontransient apartments, transient apartments, bed and breakfast inns, timeshare projects, or vacation rentals.<sup>12</sup> Under Florida law:<sup>13</sup>

- A hotel contains sleeping room accommodations for 25 or more guests, provides services generally provided by a hotel, and is recognized as a hotel in the community or by the industry.
- A motel offers rental units with an exit to the outside of each rental unit, daily or weekly rates, offstreet parking for each unit, a central office on the property with specified hours of operation, a bathroom or connecting bathroom for each rental unit, and at least six rental units. It must be recognized as a motel in the community or by the industry.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Ch. 509, F.S.

<sup>12</sup> S. 509.242, F.S.

<sup>13</sup> *Id.*

- A vacation rental is any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project.
- A nontransient apartment is a building or complex of buildings in which 75 percent or more of the units are available for rent to nontransient tenants.
- A transient apartment is a building or complex of buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.
- A timeshare project is a timeshare property, as defined in chapter 721, that is located in this state and that is also a transient public lodging establishment.

The Division also publishes a human trafficking information sheet for hotels and motels listing various signs of potential human trafficking.<sup>14</sup>

### *Criminal Penalties*

Under Florida law, human trafficking is transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person.<sup>15</sup> A person may not knowingly, or in reckless disregard of the facts, engage in human trafficking, attempt to engage in human trafficking, or benefit financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for commercial sexual activity, labor, or services:

- By using coercion;<sup>16</sup>
- With or of a child younger than 18;<sup>17</sup> or
- If for commercial sexual activity, with a mentally defective<sup>18</sup> or mentally incapacitated<sup>19</sup> person.<sup>20</sup>

Commercial sexual activity means any prostitution, lewdness, or assignation offense or attempt to commit such an offense, and includes a sexually explicit performance<sup>21</sup> and the production of pornography.<sup>22</sup>

Coercion includes:

- Using or threatening to use force against a person.
- Restraining, isolating, or confining a person without lawful authority and against his or her will, or threatening to do so.
- Using lending or other credit methods to establish a debt by a person when labor or services are pledged as a security for the debt, if the reasonably assessed value of the labor or is not applied toward the liquidation of the debt.
- Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, other immigration document, or government identification document.
- Causing or threatening to cause financial harm.
- Enticing or luring a person by fraud or deceit.
- Providing a Schedule I or II controlled substance<sup>23</sup> to a person for the purpose of exploiting that person.<sup>24</sup>

<sup>14</sup> Florida Department of Business and Professional Regulations, *Human Trafficking Information Sheet* (Mar. 22, 2016), [http://www.myfloridalicense.com/DBPR/HR/forms/documents/5022\\_104.pdf](http://www.myfloridalicense.com/DBPR/HR/forms/documents/5022_104.pdf) (last visited Mar. 21, 2019).

<sup>15</sup> S. 787.06(2)(d), F.S.

<sup>16</sup> S. 787.06(3)(b), F.S.

<sup>17</sup> S. 787.06(3)(g), F.S.

<sup>18</sup> Mentally defective means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct. S. 794.011(1)(a), F.S.

<sup>19</sup> Mentally incapacitated means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent. S. 794.011(1)(b), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> A sexually explicit performance is an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy sexual desires or appeal to the prurient interest. S. 787.06(2)(i), F.S.

<sup>22</sup> S. 787.06(2)(b), F.S.

<sup>23</sup> S. 893.03, F.S.

<sup>24</sup> S. 787.06(2)(a), F.S.

Human trafficking is a:

- First degree felony, punishable by up to 30 years in prison and a \$10,000 fine,<sup>25</sup> if the trafficking is of an adult by coercion or a child for labor or services.
- Life felony, punishable by up to life in prison, if the trafficking is for commercial sexual activity with a child or mentally defective or incapacitated person.<sup>26</sup>

Additionally, transferring or transporting a victim from another state into Florida for human trafficking is a first degree felony,<sup>27</sup> which is punishable by life if the transfer or transport was for sexual activity with a child.<sup>28</sup> A person convicted of human trafficking for commercial sexual activity must register as a sexual offender.<sup>29</sup>

### *Human Trafficking Victim Expunction*

A person may have his or her criminal history record expunged under certain circumstances.<sup>30</sup> When a record is expunged, the criminal justice agencies possessing such record must physically destroy or obliterate it.<sup>31</sup> The Florida Department of Law Enforcement (FDLE) maintains a copy of the record to evaluate subsequent requests for sealing or expunction, and to recreate the record in the event a court vacates the order to expunge.<sup>32</sup> Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to some exceptions.<sup>33</sup>

A person who is a victim of human trafficking<sup>34</sup> may petition for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed as a part of the human trafficking scheme of which he or she was a victim, regardless of the disposition of the case.<sup>35</sup> A person must prove by a preponderance of the evidence that he or she committed the crime while victimized by human trafficking. This type of expunction is not available for the following violent offenses:

- Arson.
- Sexual battery.
- Robbery.
- Kidnapping.
- Aggravated child abuse.
- Aggravated abuse of an elderly person or disabled adult.
- Aggravated assault with a deadly weapon.
- Murder.
- Manslaughter.
- Aggravated manslaughter of an elderly person or disabled adult.
- Aggravated manslaughter of a child.
- Unlawful throwing of a destructive device or bomb.
- Armed burglary.
- Aggravated battery.
- Aggravated stalking.<sup>36</sup>

### *Law Enforcement Training*

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<sup>25</sup> Ss. 775.082 and 775.083, F.S.

<sup>26</sup> S. 787.06(3)(g), F.S.

<sup>27</sup> S. 787.06(3)(f), F.S.

<sup>28</sup> S. 787.06(3)(f), F.S.

<sup>29</sup> S. 943.0435, F.S.

<sup>30</sup> Ss. 943.0581, 943.0582, 943.0583, and 943.0585, F.S.

<sup>31</sup> S. 943.045(16), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> S. 943.0585(4), F.S.

<sup>34</sup> A person subjected to coercion for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law. S. 943.0583(1)(c), F.S.

<sup>35</sup> S. 943.0583(3), F.S.

<sup>36</sup> Ss. 943.0583(3) and 775.084(1)(b), F.S.

The Criminal Justice Standards and Training Commission (Commission), as part of FDLE, establishes, implements, and evaluates criminal justice standards and training for all law enforcement, correctional, and correctional probation officers.<sup>37</sup> Among the Commission's responsibilities are establishing uniform minimum training standards and minimum curricular requirements for criminal justice training schools.<sup>38</sup> The Commission is required to design, implement, maintain, evaluate, and revise entry requirements and job-related curricula and performance standards for the basic recruit training program.<sup>39</sup> The basic recruit training program is 770 hours long, covering the following topics:

- Introduction to Law Enforcement;
- Legal;
- Interactions in a Diverse Community;
- Interviewing and Report Writing;
- Fundamentals of Patrol;
- Calls for Service;
- Criminal Investigations;
- Crime Scene to Courtroom;
- Critical Incidents;
- Traffic Stops;
- DUI Traffic Stops;
- Traffic Crash Investigations;
- Law Enforcement Vehicle Operations;
- First Aid for Criminal Justice Officers;
- Criminal Justice Firearms;
- Criminal Justice Defensive Tactics;
- Dart-Firing Stun Gun; and
- Criminal Justice Officer Physical Fitness Training.<sup>40</sup>

The Commission also offers advanced courses, including a 40-hour course on Advanced Investigative Techniques of Human Trafficking Offenses.<sup>41</sup> Advanced courses are elective; however, an officer must complete 40 hours of continuing training or education every four years.<sup>42</sup>

### Solicitation of Prostitution

Prostitution is the giving or receiving of the body for hired sexual activity, unless between spouses.<sup>43</sup> Sexual activity is any of the following, unless done for a bona fide medical purpose:

- 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.<sup>44</sup>

Lewdness is any indecent or obscene act, and assignation is the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such activity. A person 18 or older may not commit, offer to commit, or engage in prostitution, lewdness, or assignation.<sup>45</sup>

When done for the purpose of lewdness, assignation or prostitution, the following acts are criminalized:

- Owning, establishing, or maintaining a place, structure, building, or conveyance.
- Offering another.

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<sup>37</sup> S. 943.12, F.S.

<sup>38</sup> Ss. 943.12(5) and (8), F.S.

<sup>39</sup> S. 943.17, F.S.

<sup>40</sup> Florida Department of Law Enforcement, *Florida Law Enforcement Academy (Version 2018.07) #2000*, <http://www.fdle.state.fl.us/CJSTC/Curriculum/Active-Courses/2000.aspx> (last visited Mar. 21, 2019).

<sup>41</sup> Florida Department of Law Enforcement, *Active Courses*, <http://www.fdle.state.fl.us/CJSTC/Curriculum/Active-Courses.aspx> (last visited Mar. 21, 2019).

<sup>42</sup> S. 943.135, F.S.

<sup>43</sup> S. 796.07(1)(a), F.S.

<sup>44</sup> S. 796.07(1)(d), F.S.

<sup>45</sup> S. 796.07(2)(e), F.S.

- Receiving any person into a place, structure, building or conveyance, or permitting a person to remain.
- Directing, taking, or transporting a person to a place, structure, or building, or to another person.
- Residing in, entering, or remaining in, a place, structure, building, or conveyance.<sup>46</sup>

Further, a person may not solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation, which carries higher penalties than other prostitution offenses.<sup>47</sup>

For prostitution offenses other than solicitation:

- A first offense is a second degree misdemeanor, punishable by up to 60 days in jail and a \$500 fine.
- A second offense is a first degree misdemeanor, punishable by up to one year in jail and a \$1,000 fine.
- A third or subsequent offense is a third degree felony, punishable by up to five years in prison and a \$5,000 fine.<sup>48</sup>

For solicitation of prostitution, lewdness, or assignation:

- A first offense is a first degree misdemeanor.
- A second offense is a third degree felony.
- A third or subsequent offense is a second degree felony, punishable by up to 15 years in prison and a \$10,000 fine.

A person convicted of soliciting prostitution, lewdness, or assignation must:

- Perform 100 community service hours.<sup>49</sup>
- Attend an education program about the negative effects of prostitution and human trafficking, if offered in the circuit where he or she was sentenced.
- Serve a minimum mandatory 10 days in jail, if convicted for a second or subsequent time.<sup>50</sup>

Additionally, a court may impound the vehicle of a person convicted of solicitation of prostitution, lewdness, or assignation for up to 60 days if the person used a vehicle during the offense.<sup>51</sup>

Studies have shown that targeting purchasers of commercial sexual activity effectively reduces sex-trafficking.<sup>52</sup> Demand reduction tactics such as reverse stings,<sup>53</sup> education programs,<sup>54</sup> and public shaming have deterred Johns and reduced commercial sexual exploitation.<sup>55</sup> In April 2018, in an effort to reduce demand, federal law enforcement shut down Backpage.com, a sex marketplace website responsible for advertising sex-trafficking.<sup>56</sup>

## Criminal Registries

### *Sexual Offenders and Sexual Predators*

<sup>46</sup> Ss. 796.07(2)(a)-(d) and (g), F.S.

<sup>47</sup> Ss. 775.082, 775.083, and 796.07(f), F.S.

<sup>48</sup> S. 796.07(e), F.S.

<sup>49</sup> S. 796.07(5)(b), F.S.

<sup>50</sup> S. 796.07(5)(c), F.S.

<sup>51</sup> S. 796.07(5)(d), F.S.

<sup>52</sup> Sarah Godoy, *We Cannot End Sex Trafficking Without Addressing Demand*, Forbes (Jan. 11, 2018), <https://www.forbes.com/sites/rebeccasadwick/2018/01/11/human-trafficking-demand/#55934e774b7c> (last visited Mar. 21, 2019).

<sup>53</sup> A reverse sting is an operation using an undercover police officer posing as a prostitute to catch Johns soliciting prostitution. Demandforum.net, *Reverse Stings*, <http://www.demandforum.net/reverse-stings/> (last visited Mar. 21, 2019).

<sup>54</sup> National Institute of Justice, *An Overview of John Schools in the United States* (Jan. 7, 2013), <http://www.demandforum.net/wp-content/uploads/2012/01/john-school-overview-from-national-assessment.pdf> (last visited Mar. 21, 2019).

<sup>55</sup> *Id.*

<sup>56</sup> Sarah N. Lynch and Lisa Lambert, *Sex ads website Backpage shut down by U.S. authorities*, Reuters (Apr. 6, 2018), <https://www.reuters.com/article/us-usa-backpage-justice/sex-ads-website-backpage-shut-down-by-u-s-authorities-idUSKCN1HD2QP> (last visited Mar. 21, 2019).

Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA), establishes national minimum standards for sex offender registration and notification.<sup>57</sup> In compliance with SORNA, Florida requires a person to register as a sexual offender or sexual predator if he or she is convicted of a qualifying offense, such as sexual battery, a lewd or lascivious offense against a child, or human trafficking.<sup>58</sup> A sexual offender or sexual predator must comply with a number of statutory registration requirements, including registering all residences and submitting to a photograph.<sup>59</sup> FDLE maintains a website where the public can search for a sexual offender or predator by name, or for all sexual offenders or predators with registered residences near a particular address.<sup>60</sup> A member of the public may also subscribe to receive an email alert whenever a sexual offender or predator moves close to a monitored address through the Florida Offender Alert System.<sup>61</sup>

The United States Supreme Court (Supreme Court) reviewed a constitutional challenge to a sexual offender registry in 2003,<sup>62</sup> holding that retroactively requiring a person to register did not violate the *ex post facto* clause of the United States Constitution.<sup>63</sup> The Supreme Court considered whether sexual offender registration was punitive, in purpose or effect, by weighing whether the requirement:

- Has been historically and traditionally regarded as a punishment;
- Imposes an affirmative disability or restraint;
- Promotes the traditional aims of punishment;
- Has a rational connection to a nonpunitive purpose; and
- Is excessive with respect to a nonpunitive purpose.<sup>64</sup>

Considering each of these factors, the Supreme Court held that sexual offender registration was not punitive and therefore did not violate *ex post facto*. However, in 2017, the federal District Court of Colorado (District Court) held that the Colorado sexual offender registry law violated the Eighth Amendment's prohibition on cruel and unusual punishment.<sup>65</sup> The District Court held that the registry was punitive, noting the vast changes in technology since the Supreme Court considered the question in 14 years prior:

Justice Kennedy's words ring hollow that the state's website does not provide the public with means to shame the offender when considering the evidence in this case. He and his colleagues did not foresee the development of private, commercial websites exploiting the information made available to them and the opportunities for "investigative journalism" as that done by a Denver television station adversely affecting [one of the plaintiffs]. The justices did not foresee the ubiquitous influence of social media.<sup>66</sup>

The District Court determined Colorado's law was punitive based on, among other factors, its:

- Capacity for public shaming;
- Resemblance to parole or probation due to in-person reporting requirements;
- Prolonged internet monitoring by requiring a person to register all email addresses, instant-messaging identities, or chat room identities;
- Purported deterrent intent; and
- Rigid requirements and timeframes, with no consideration of individual circumstances.<sup>67</sup>

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<sup>57</sup> 34 USC § 20912, *et seq.*

<sup>58</sup> Ss. 775.21 and 943.0435, F.S.

<sup>59</sup> *Id.*

<sup>60</sup> Florida Department of Law Enforcement, *Sexual Offenders and Predators Search*, <https://offender.fdle.state.fl.us/offender/sops/home.jsf> (last visited Mar. 21, 2019).

<sup>61</sup> Florida Department of Law Enforcement, *Florida Offender Alert System*, <https://www.floridaoffenderalert.com/> (last visited Mar. 21, 2019).

<sup>62</sup> *Smith v. Doe*, 538 U.S. 84 (2003).

<sup>63</sup> U.S. Const. art. I, § 9, cl. 3.

<sup>64</sup> *Smith v. Doe*, 538 U.S. at 97.

<sup>65</sup> U.S. Const. amend. VIII; *Millard v. Rankin*, 265 F.Supp.3d 1211, 1226 (D. Colo. 2017).

<sup>66</sup> *Millard*, 265 F.Supp.3d at 1226.

<sup>67</sup> *Id.* at 1226-31.



Having found the registration law to be punitive, the District Court reasoned that the punishment was cruel and unusual by disproportionately subjecting the plaintiffs to additional punishment beyond their sentences – primarily due to the potential but unpredictable public abuse of the offender’s registration information.<sup>68</sup> The case is currently before the Court of Appeals for the Tenth Circuit.

### *Career Criminals*

A court designates a person as a career criminal at sentencing, based on that person’s prior criminal history, current offense, and other factors. The following types of career criminals must register with the FDLE, which maintains a publicly accessible website<sup>69</sup> of registered career criminals.<sup>70</sup>

- Habitual violent felony offender;<sup>71</sup>
- Violent career criminal;<sup>72</sup>
- Three-time violent felony offender;<sup>73</sup> and
- Prison releasee reoffender.<sup>74</sup>

### Direct-Support Organizations

A direct-support organization (DSO) is a non-profit organization authorized by statute to carry out specific tasks in support of a public entity or public cause. The function and purpose of a DSO is detailed in its enacting statute and the contract with the agency the DSO was created to support.<sup>75</sup>

In 2014, the Legislature created s. 20.058, F.S., establishing transparency and reporting requirements for DSOs.<sup>76</sup> Specifically, the law requires each DSO to submit annually the following information to the agency it was created to support by August 1:<sup>77</sup>

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the organization;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization’s plans for the next three fiscal years;
- A copy of the organization’s code of ethics; and
- A copy of the organization’s most recent Internal Revenue Service (IRS) Form 990.<sup>78</sup>

Additionally, the information submitted annually by a DSO must be available on the agency’s website and include a link to the DSO’s website, if one exists.<sup>79</sup> A contract between an agency and a DSO must be contingent upon the DSO submitting the required information to the agency and posting the information on the agency’s website.<sup>80</sup> The contract must include a provision for ending operations and returning state-issued funds if the authorizing statute is repealed, the contract is terminated, or the organization is dissolved.<sup>81</sup> If a DSO fails to submit the required information to the agency for two consecutive years, the agency head must terminate its contract with the DSO.<sup>82</sup>

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<sup>68</sup> *Id.* at 1232.

<sup>69</sup> Florida Department of Law Enforcement, *Career Offender Search*, <http://www.fdle.state.fl.us/coflyer/home.asp> (last visited Mar. 21, 2019).

<sup>70</sup> S. 775.261, F.S.

<sup>71</sup> S. 775.084(1)(b), F.S.

<sup>72</sup> S. 775.084(1)(d), F.S.

<sup>73</sup> S. 775.084(1)(c), F.S.

<sup>74</sup> S. 775.082(9), F.S.

<sup>75</sup> Ss. 14.29(9)(a), 16.616(1), and 258.015(1), F.S. See also Rules of the Florida Auditor General, *Audits of Certain Nonprofit Organizations* (effective June 30, 2017), Rule 10.720(1)(b) and (d), [https://flauditor.gov/pages/pdf\\_files/10\\_700.pdf](https://flauditor.gov/pages/pdf_files/10_700.pdf) (last visited Mar. 21, 2019).

<sup>76</sup> Ch. 14-96, § 3, Laws of Fla.

<sup>77</sup> S. 20.058(1), F.S.

<sup>78</sup> The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. § 501. 26 C.F.R. § 1.6033-2.

<sup>79</sup> S. 20.058(2), F.S.

<sup>80</sup> S. 20.058(4), F.S.

<sup>81</sup> Ch. 17-75, Laws of Fla.

<sup>82</sup> S. 20.058(4), F.S.

By August 15 of each year, the agency must report to the Governor, President of the Senate, Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the information submitted by each DSO, along with the agency's recommendation and supporting rationale to continue, terminate, or modify the agency's association with the DSO.<sup>83</sup>

Any law creating or authorizing a DSO must provide that the authorization is repealed on October 1 of the fifth year after enactment, unless reviewed and reenacted by the Legislature.

Section 215.981, F.S., requires each DSO with annual expenditures in excess of \$100,000 to conduct an annual financial audit of its accounts and records.<sup>84</sup> The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the DSO. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the DSO supports. Additionally, the Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of DSO accounts and records.<sup>85</sup>

### **Effect of Proposed Changes**

HB 851 requires an owner or operator of a public lodging establishment to require managing employees and employees who are reasonably expected to routinely interact with guests to complete a human trafficking educational program covering human trafficking identification, prevention, and reporting. Employees required to complete the training must do so within 30 days of being hired or by January 1, 2020, whichever occurs later. A public lodging establishment owner or operator must implement an employee protocol or code of conduct to prevent, detect, and report suspected human trafficking by January 1, 2020. The Division may impose an administrative fine of up to \$1,000 per day on a public lodging establishment that is not in compliance with these requirements, and must impose the maximum fine if the violation is for failing to establish a protocol or code of conduct.

The bill requires each certified law enforcement officer to complete training on identifying and investigating human trafficking, either during basic recruit training or as continuing education before July 1, 2022. An officer who fails to complete the training loses his or her certification until he or she completes the course. The Commission must develop the law enforcement training in consultation with the Department of Children and Families (DCF) and the Statewide Council on Human Trafficking.

The bill exempts kidnapping from the list of disqualifying offenses for human trafficking victim expunction, allowing a person to expunge a kidnapping conviction if he or she proves by a preponderance of the evidence that he or she was a victim of human trafficking during the commission of the crime.

The bill creates the Soliciting for Prostitution Registry, and requires a clerk of court to forward the criminal history record of any person convicted of soliciting prostitution, assignation, or lewdness to FDLE for inclusion in the registry. A person's criminal history is registered regardless of whether adjudication was withheld for the charge. The bill does not require FDLE to publish the registry on a website or instruct the agency on how to use the registry. However, as there is no public records exemption, the registry is subject to a public records request under ch. 119, F.S.

The bill requires DCF, in consultation with FDLE and the Attorney General, to establish a DSO to develop community and private sector resources and serve as a liaison with state agencies, other state governments, and the public and private sectors in funding inpatient care to human trafficking victims.

The bill provides an effective date of July 1, 2019.

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<sup>83</sup> S. 20.058(3), F.S.

<sup>84</sup> The independent audit requirement does not apply to a DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is \$300,000 for a DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.

<sup>85</sup> S. 11.45(3), F.S.

**B. SECTION DIRECTORY:**

- Section 1:** Creates s. 509.096, F.S., relating to human trafficking awareness training and policies for employees of public lodging establishment; penalties.
- Section 2:** Creates s. 787.08, F.S., relating to direct-support organization.
- Section 3:** Amends s. 796.07, F.S., relating to prohibiting prostitution and related acts.
- Section 4:** Creates s. 943.0433, F.S., relating to Soliciting for Prostitution Registry.
- Section 5:** Amends s. 943.0583, F.S., relating to human trafficking victim expunction.
- Section 6:** Creates s. 943.17297, F.S., relating to training in identifying and investigating human trafficking.
- Section 7:** The bill provides an effective date of July 1, 2019.

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

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

1. Revenues:

The bill may have a positive indeterminate fiscal impact on state revenues due to the administrative fine authorized against a public lodging establishment not in compliance with training and protocol requirements.

2. Expenditures:

The bill may have a negative indeterminate fiscal impact on state expenditures due to costs involved in developing law enforcement training, and implementing and managing the Solicitation of Prostitution Registry.

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

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A public lodging establishment may have to expend funds on employee training, development of an employee protocol or code of conduct, and administrative fines incurred for noncompliance. The DSO will assist with funding inpatient services through the private sector for human trafficking victims.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

Because a first solicitation offense is a misdemeanor, a publicly accessible registry may raise Eighth Amendment concerns as disproportionate punishment.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**