

CHAPTER 2015-145

Committee Substitute for Committee Substitute for House Bill No. 465

An act relating to human trafficking; amending s. 796.07, F.S.; providing enhanced criminal penalties for soliciting another to commit prostitution and similar offenses; requiring persons convicted of such offenses to perform community service and pay for and attend an education program; requiring the court to impose minimum mandatory terms of incarceration for persons convicted two or more times of soliciting another to commit prostitution and similar offenses; providing for impoundment of a vehicle used in soliciting another to commit prostitution and similar offenses; providing an opportunity for owners to prevent the impoundment or immobilization in certain circumstances; amending s. 943.0583, F.S.; providing that any court in the circuit in which the petitioner was arrested may expunge the criminal history record of a victim of human trafficking; requiring a judge to allow an advocate to be present with a human trafficking victim in an expunction hearing in certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 796.07, Florida Statutes, is amended to read:

796.07 Prohibiting prostitution and related acts.—

(1) As used in this section:

(a) “Prostitution” means the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

(b) “Lewdness” means any indecent or obscene act.

(c) “Assignment” means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.

(d) “Sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.

(2) It is unlawful:

(a) To own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignment, or prostitution.

(b) To offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act.

(c) To receive, or to offer or agree to receive, any person into any place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose.

(d) To direct, take, or transport, or to offer or agree to direct, take, or transport, any person to any place, structure, or building, or to any other person, with knowledge or reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation.

(e) To offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation.

(f) To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.

(g) To reside in, enter, or remain in, any place, structure, or building, or to enter or remain in any conveyance, for the purpose of prostitution, lewdness, or assignation.

(h) To aid, abet, or participate in any of the acts or things enumerated in this subsection.

(i) To purchase the services of any person engaged in prostitution.

(3)(a) In the trial of a person charged with a violation of this section, testimony concerning the reputation of any place, structure, building, or conveyance involved in the charge, testimony concerning the reputation of any person residing in, operating, or frequenting such place, structure, building, or conveyance, and testimony concerning the reputation of the defendant is admissible in evidence in support of the charge.

(b) Notwithstanding any other provision of law, a police officer may testify as an offended party in an action regarding charges filed pursuant to this section.

(4)(a) A person who violates any provision of this section, other than paragraph (2)(f), commits:

1.(a) A misdemeanor of the second degree for a first violation, punishable as provided in s. 775.082 or s. 775.083.

2.(b) A misdemeanor of the first degree for a second violation, punishable as provided in s. 775.082 or s. 775.083.

3.(e) A felony of the third degree for a third or subsequent violation, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b)(5) A person who is charged with a third or subsequent violation of this section, other than paragraph (2)(f), shall be offered admission to a pretrial intervention program or a substance abuse treatment program as provided in s. 948.08.

(5)(a) A person who violates paragraph (2)(f) commits:

1. A misdemeanor of the first degree for a first violation, punishable as provided in s. 775.082 or s. 775.083.

2. A felony of the third degree for a second violation, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A felony of the second degree for a third or subsequent violation, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) In addition to any other penalty imposed, the court shall order a person convicted of a violation of paragraph (2)(f) to:

1. Perform 100 hours of community service; and

2. Pay for and attend an educational program about the negative effects of prostitution and human trafficking, such as a sexual violence prevention education program, if such program exists in the judicial circuit in which the offender is sentenced.

(c) In addition to any other penalty imposed, the court shall sentence a person convicted of a second or subsequent violation of paragraph (2)(f) to a minimum mandatory period of incarceration of 10 days.

(d)1. If a person who violates paragraph (2)(f) uses a vehicle in the course of the violation, the judge, upon the person’s conviction, may issue an order for the impoundment or immobilization of the vehicle for a period of up to 60 days. The order of impoundment or immobilization must include the names and telephone numbers of all immobilization agencies meeting all of the conditions of s. 316.193(13). Within 7 business days after the date that the court issues the order of impoundment or immobilization, the clerk of the court must send notice by certified mail, return receipt requested, to the registered owner of the vehicle, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the vehicle.

2. The owner of the vehicle may request the court to dismiss the order. The court must dismiss the order, and the owner of the vehicle will incur no costs, if the owner of the vehicle alleges and the court finds to be true any of the following:

a. The owner’s family has no other private or public means of transportation;

b. The vehicle was stolen at the time of the offense;

c. The owner purchased the vehicle after the offense was committed, and the sale was not made to circumvent the order and allow the defendant continued access to the vehicle; or

d. The vehicle is owned by the defendant but is operated solely by employees of the defendant or employees of a business owned by the defendant.

3. If the court denies the request to dismiss the order, the petitioner may request an evidentiary hearing. If, at the evidentiary hearing, the court finds to be true any of the circumstances described in sub-subparagraphs (d)2.a.-d., the court must dismiss the order and the owner of the vehicle will incur no costs.

(6) A person who violates paragraph (2)(f) shall be assessed a civil penalty of \$5,000 if the violation results in any judicial disposition other than acquittal or dismissal. Of the proceeds from each penalty assessed under this subsection, the first \$500 shall be paid to the circuit court administrator for the sole purpose of paying the administrative costs of treatment-based drug court programs provided under s. 397.334. The remainder of the penalty assessed shall be deposited in the Operations and Maintenance Trust Fund of the Department of Children and Families for the sole purpose of funding safe houses and safe foster homes as provided in s. 409.1678.

Section 2. Subsections (2) and (7) and paragraph (a) of subsection (8) of section 943.0583, Florida Statutes, are amended to read:

943.0583 Human trafficking victim expunction.—

(2) Notwithstanding any other provision of law, upon the filing of a petition as provided in this section, any court in the circuit in which the petitioner was arrested, so long as the court has jurisdiction over the class of offense or offenses sought to be expunged, the court of original jurisdiction over the crime sought to be expunged may order a criminal justice agency to expunge the criminal history record of a victim of human trafficking who complies with the requirements of this section. A petition need not be filed in the court where the petitioner's criminal proceeding or proceedings originally occurred. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the discretion of the court.

(7)(a) In judicial proceedings under this section, a copy of the completed petition to expunge shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to expunge.

(b) The petitioner or the petitioner’s attorney may appear at any hearing under this section telephonically, via video conference, or by other electronic means.

(c) The court shall allow an advocate from a state attorney’s office, law enforcement agency, safe house or safe foster home as defined in s. 409.1678(1), or a residential facility offering services to adult victims of human trafficking to be present with the petitioner during any court proceedings or hearings under this section, if the petitioner has made such a request and the advocate is able to be present.

~~(d)~~(e) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prosecutor and the arresting agency. The arresting agency is responsible for forwarding the order to any other agency listed in the court order to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to expunge to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency that the records of the court reflect has received the criminal history record from the court.

(8)(a) Any criminal history record of a minor or an adult that is ordered expunged ~~by the court of original jurisdiction over the charges sought to be expunged~~ pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record, except that any criminal history record in the custody of the department must be retained in all cases.

Section 3. This act shall take effect October 1, 2015.

Approved by the Governor June 11, 2015.

Filed in Office Secretary of State June 11, 2015.