

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 Committee on Criminal Justice

BILL: CS/SB 312

INTRODUCER: Criminal Justice Committee and Senators Collins and Hooper

SUBJECT: Offenses Involving Children

DATE: January 10, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Parker</u>	<u>Stokes</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 312 amends s. 90.803, F.S., to increase the age for the child hearsay exception from 16 to 17 years of age. The hearsay rule is a rule of evidence which prohibits the admission of out-of-court statements that are offered to prove the truth of the matter asserted as evidence in judicial proceedings.

Under the child hearsay exception in current law, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 16 or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:

- The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability; and
- The child either testifies, or is unavailable as a witness and there is other corroborative evidence of abuse or offense.

The bill amends s. 775.21, F.S., providing that human trafficking offenses involving a minor under s. 787.06(3)(f) and (g), F.S., will require a sexual predator designation on a first offense. The bill provides that any violation of s. 787.06(3)(f) and (g), F.S., will require registration as a sexual predator if the offender has another qualifying offense.

The bill may have an indeterminate fiscal impact on the courts. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2024.

II. Present Situation:

The hearsay rule is a rule of evidence which prohibits the admission of out-of-court statements that are offered to prove the truth of the matter asserted as evidence in judicial proceedings.¹

Hearsay

Hearsay is a statement, other than one made by the declarant while testifying at trial or hearing, offered in evidence to prove the truth of the matter asserted.² Current law provides hearsay exceptions where, based on the circumstances surrounding the statement, the law finds sufficient reliability to warrant a hearsay exception. For example, out-of-court statements made by children who are 16 or less, are admissible in certain instances.³

Courts have noted that the questioning of hearsay in criminal cases is of particular importance based on the constitutional right of the accused to cross-examine all witnesses appearing against him or her.⁴

Although hearsay evidence is generally inadmissible as evidence in a court hearing or trial, courts permit the admission of hearsay if the statement falls under a firmly-rooted exception in law, or possess a guarantee of trustworthiness.⁵

Florida's evidence code groups hearsay exceptions together as non-hearsay, hearsay exceptions where the availability of the declarant is immaterial, and hearsay exceptions where the declarant is unavailable.

Non-hearsay

A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination and the statement is:

- Inconsistent with the declarant's testimony and given under oath subject to perjury at a trial, hearing, or other proceedings or in a deposition;
- Consistent with the declarant's testimony and offered to rebut an express or implied charge against the declarant of improper influence, motive, or recent fabrication; or

¹ Sections 90.801(1)(c) and 90.802, F.S.

² Section 90.801, F.S.

³ Section 90.803(23), F.S.

⁴ The Confrontation Clause of the Sixth Amendment of the U.S. Constitution provides, in part "that in all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." Section 16, Art. I, of the State Constitution, provides, in part "In all criminal prosecutions the accused ... shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses" Indeed, "the right to confront one's accusers is a concept that dates back to Roman times." *Crawford v. Washington*, 541 U.S. 36, 43 (2004).

⁵ See *Crawford v. Washington*, 541 U.S. 36, 43 (2004).

- One of identification of a person made after perceiving the person.⁶

Hearsay Exceptions Where the Availability of the Declarant is Immaterial

Current law provides exceptions to the hearsay rule, even though the declarant is available.⁷ The following provides, in part, a list of exceptions which may be admissible even when the declarant is available as a witness:

- **SPONTANEOUS STATEMENT:** A spontaneous statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, except when such statement is made under circumstances that indicate its lack of trustworthiness.⁸
- **EXCITED UTTERANCE:** A statement or excited utterance relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.⁹
- **THEN-EXISTING MENTAL, EMOTIONAL, OR PHYSICAL CONDITION:** A statement of the declarant's then-existing state of mind, emotion, or physical sensation, including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health, when such evidence is offered to: (1) Prove the declarant's state of mind, emotion, or physical sensation at that time or at any other time when such state is an issue in the action; (2) Prove or explain acts of subsequent conduct of the declarant.¹⁰
- **ADMISSIONS:** A statement that is offered against a party and is the party's own statement in either an individual or a representative capacity; a statement of which the party has manifested an adoption or belief in its truth; a statement by a person specifically authorized by the party to make a statement concerning the subject; a statement by the party's agent or servant concerning a matter within the scope of the agency or employment thereof, made during the existence of the relationships; or a statement by a person who was a coconspirator of the party during the course, and in furtherance, of the conspiracy. Upon request of counsel, the court shall instruct the jury that the conspiracy itself and each member's participation in it must be established by independent evidence, either before the introduction of any evidence or before evidence is admitted under this paragraph.¹¹
- **STATEMENT OF CHILD VICTIM:** Unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or

⁶ Section 90.801(2), F.S.

⁷ Section 90.803(1)-(24), F.S., includes the following exceptions where the availability of the declarant is immaterial: spontaneous statement, excited utterance, then-existing mental, emotional, or physical condition, statement for purposes of medical diagnosis or treatment, recorded recollection, records of regularly conducted business activity, absence of entry in records of regularly conducted activity, public records and reports, records of vital statistics, absence of public record or entry, records of religious organizations, marriage, baptismal, and similar certificates, family records, records of documents affecting an interest in property, statements of documents affecting an interest in property, statements in ancient documents, marketing reports and commercial publications, admissions, reputation concerning personal or family history, reputation concerning boundaries or general history, reputation as to character, former testimony, statement of child victim, statement of elderly person or disabled adult.

⁸ Section 90.803(1), F.S.

⁹ Section 90.803(2), F.S.

¹⁰ Section 90.803(3), F.S., However, this subsection does not make admissible: (1) an after-the-fact statement of memory or belief to prove the fact remembered or believed, unless such statement relates to the execution, revocation, identification, or terms of the declarant's will; (2) a statement made under circumstances that indicate its lack of trustworthiness.

¹¹ Section 90.803(18), F.S.

developmental age of 16 or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:

- The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability; and
- The child either testifies, or is unavailable¹² as a witness and there is other corroborative evidence of abuse or offense.¹³

Hearsay Exceptions Where the Declarant is Unavailable

Current law provides a list of hearsay exceptions that applies when the declarant is unavailable.^{14,15} The following provides, in part, a list of exceptions which may be admissible when the declarant is unavailable as a witness:

- **FORMER TESTIMONY:** Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.¹⁶
- **STATEMENT UNDER BELIEF OF IMPENDING DEATH:** In a civil or criminal trial, a statement made by a declarant while reasonably believing that his or her death was imminent, concerning the physical cause or instrumentalities of what the declarant believed to be impending death or the circumstances surrounding impending death.¹⁷
- **STATEMENT AGAINST INTEREST:** A statement which, at the time of its making, was so far contrary to the declarant's pecuniary or proprietary interest or tended to subject the declarant to liability or to render invalid a claim by the declarant against another, so that a person in the declarant's position would not have made the statement unless he or she believed it to be true. A statement tending to expose the declarant to criminal liability and

¹² Section 90.803(23)(a)2.b., F.S., provides that unavailability includes a finding by the court that the child's participation in the trial or proceeding would result in a substantial likelihood of severe emotional or mental harm, in addition to findings pursuant to s. 90.804(1), F.S.

¹³ Section 90.803(23), F.S.

¹⁴ Section 90.804(1), F.S., provides that "unavailability as a witness" means that the declarant: is exempted by a ruling of a court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; has suffered a lack of memory of the subject matter of his or her statement so as to destroy the declarant's effectiveness as a witness during the trial; is unable to be present or to testify at the hearing because of death or because of then-existing physical or mental illness or infirmity; or is absent from the hearing, and the proponent of a statement has been unable to procure the declarant's attendance or testimony by process or other reasonable means. However, a declarant is not unavailable as a witness if such exemption, refusal, claim of lack of memory, inability to be present, or absence is due to the procurement or wrongdoing of the party who is the proponent of his or her statement in preventing the witness from attending or testifying.

¹⁵ Section 90.804(2)(a)-(f), F.S., includes the following exceptions where the declarant is unavailable: Former testimony, statement under belief of impending death, statement against interest, statement of personal or family history, statement by deceased or ill declarant similar to one previously admitted, and statement offered against a party that wrongfully caused the declarant's unavailability.

¹⁶ Section 90.804(2)(a), F.S.

¹⁷ Section 90.804(2)(b), F.S.

offered to exculpate the accused is inadmissible, unless corroborating circumstances show the trustworthiness of the statement.¹⁸

Hearsay within Hearsay

Hearsay within hearsay is not excluded under s. 90.802, F.S., provided each part of the combined statements conforms with an exception to the hearsay rule as provided in s. 90.803 or s. 90.804, F.S.¹⁹

Florida's Sexual Predator and Sexual Offender Registration Laws

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender.²⁰ The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders.

Section 775.21, F.S., provides that a person is designated as a sexual predator by a court if the person:

- Has been convicted of a qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;^{21,22}
- Has been convicted of a qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense;²³ or
- Was found to be a sexually violent predator in a civil commitment proceeding.^{24,25}

Section 943.0435, F.S., provides that a person is classified as a sexual offender if the person:

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997, from the sanction imposed for that offense;²⁶
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense;²⁷ or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the juvenile was 14 years of age or older.²⁸

¹⁸ Section 90.804(2)(c), F.S.

¹⁹ Section 90.805, F.S.

²⁰ Sections 775.21 and 943.0435, F.S.

²¹ Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).

²² Section 775.21(4)(a)1.a., F.S.

²³ Section 775.21(4)(a)1.b., F.S.

²⁴ Section 775.21(4)(d), F.S.

²⁵ Section 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

²⁶ Section 943.0435(1)(h)1.a., F.S.

²⁷ Section 943.0435(1)(h)1.b. and c., F.S.

²⁸ Section 943.0435(1)(h)1.d., F.S.

Requirements for registration and reregistration are similar for sexual predators and sexual offenders, but the frequency of reregistration may differ.²⁹ Registration requirements may also differ based on a special status, e.g., the sexual predator or sexual offender is in the Department of Corrections (DOC) control or custody, under the DOC's or the Department of Juvenile Justice's (DJJ) supervision, or in a residential commitment program under the DJJ.

Sexual predators and sexual offenders are required to report at registration and reregistration certain information, including but not limited to, physical characteristics, relevant sex offense history, and information on residence, vehicles/vessels owned, and travel. The Florida Department of Law Enforcement (FDLE), through its agency website, provides a searchable database that includes some of this information.³⁰ Further, local law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage.

Human Trafficking

Human trafficking victims are young children, teenagers, and adults who are trafficked domestically within the borders of the United States or smuggled across international borders worldwide.³¹ Many human trafficking victims are induced with false promises of financial or emotional security, but are forced or coerced into commercial sex, domestic servitude, or other types of forced labor.³² Any minor who is younger than 18 years old and who is induced to perform a commercial sex act is a human trafficking victim even if there is no force, fraud, or coercion.³³ Increasingly, criminal organizations, such as gangs, are enticing local school children into commercial sexual exploitation or trafficking.³⁴ The average ages of youth who are trafficked are 11-14 years old.³⁵

²⁹ All sexual predators, sexual offenders convicted for offenses specified in s. 943.0435(14)(b), F.S., and juvenile sexual offenders required to register per s. 943.0435(1)(h)1.d., F.S., for certain offenses must reregister four times per year (on the birth month of the sexual predator or qualifying sexual offender and every third month thereafter). Sections 775.21(8)(a), 943.0435(14)(b), 944.607(13)(b), and 985.4815(13)(a), F.S. All other sexual offenders are required to reregister two times per year (on the birth month of the qualifying sexual offender and during the sixth month following the sexual offender's birth month). Section 943.0435(14)(a), F.S.

³⁰ The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at an institute of higher education. See <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on December 8, 2023).

³¹ See s. 787.06(1)(a), F.S.

³² The Department of Education, *Healthy Schools – Human Trafficking*, available at <https://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited December 28, 2023).

³³ *Id.*

³⁴ *Id.*

³⁵ Blue Campaign, *Human Trafficking 101 for School Administrators and Staff*, available at <https://rems.ed.gov/docs/Human%20Trafficking%20101%20for%20School%20Administrators%20and%20Staff.pdf> (last visited December 28, 2023).

Any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking:

- For labor³⁶ or services³⁷ of any child under the age of 18 or an adult believed by the person to be a child younger than the age of 18 commits a first degree felony;³⁸
- Using coercion for labor or services of an adult commits a first degree felony;³⁹
- Using coercion for commercial sexual activity of an adult commits a first degree felony;⁴⁰
- For labor or services of any child under the age of 18 or an adult believed by the person to be a child younger than the age of 18 who is an unauthorized alien commits a first degree felony;^{41,42}
- Using coercion for labor or services of an adult who is an unauthorized alien commits a first degree felony;⁴³
- Using coercion for commercial sexual activity of an adult who is an unauthorized alien commits a first degree felony;⁴⁴
- For labor or services who does so by the transfer or transport of any child under the age of 18 or an adult believed by the person to be a child younger than the age of 18 from outside the state of Florida to within the state of Florida commits a first degree felony;⁴⁵
- Using coercion for labor or services who does so by the transfer or transport of an adult from outside the state of Florida to within the state of Florida commits a first degree felony;⁴⁶
- For commercial sexual activity who does so by the transfer or transport of any child under the age of 18 or an adult believed by the person to be a child younger than the age of 18 from outside of the state of Florida to within the state of Florida commits a first degree felony punishable by imprisonment for a term of years not exceeding life;⁴⁷
- Using coercion for commercial sexual activity who does so by the transfer or transport of an adult from outside the state of Florida to within the state of Florida commits a first degree felony;⁴⁸ or

³⁶ Section 787.06(2)(e), F.S., provides “labor” means work of economic or financial value.

³⁷ Section 787.06(2)(h), F.S., provides “services” means any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs.

³⁸ Section 787.06(3)(a)1., F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S. However, when specifically provided by statute, a first degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment. Section 775.082, F.S.

³⁹ Section 787.06(3)(a)2., F.S.

⁴⁰ Section 787.06(2)(b), F.S., defines “commercial sexual activity” as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines “sexual explicit performance” as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

⁴¹ Section 787.06(3)(c)1., F.S.

⁴² Section 787.06(2)(j), F.S., defines “unauthorized alien” as an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. s. 1324a(h)(3).

⁴³ Section 787.06(3)(c)2., F.S.

⁴⁴ Section 787.06(3)(d), F.S.

⁴⁵ Section 787.06(3)(e)1., F.S.

⁴⁶ Section 787.06(3)(e)2., F.S.

⁴⁷ Section 787.06(3)(f)1., F.S., provides that an offense committed under these circumstances is punishable by a term of imprisonment not exceeding life or as provided in ss. 775.082, 775.083, or 775.084, F.S.

⁴⁸ Section 787.06(3)(f)2., F.S.

- For commercial sexual activity in which any child under the age of 18 or an adult believed by the person to be a child younger than 18, or in which any person who is mentally defective⁴⁹ or mentally incapacitated⁵⁰ is involved commits a life felony.⁵¹

It is a life felony for any parent, legal guardian, or other person having custody or control of a minor to sell or otherwise transfer custody or control of such minor, or make such an offer, with knowledge or reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will be subject to human trafficking.⁵²

III. Effect of Proposed Changes:

The bill amends s. 90.803, F.S., to increase the age for the child hearsay exception from 16 to 17 years of age. The hearsay rule is a rule of evidence which prohibits the admission of out-of-court statements that are offered to prove the truth of the matter asserted as evidence in judicial proceedings.

Under the child hearsay exception in current law, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 16 or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:

- The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability; and
- The child either testifies, or is unavailable as a witness and there is other corroborative evidence of abuse or offense.

The bill amends s. 775.21, F.S., providing that human trafficking offenses involving a minor under s. 787.06(3)(f) and (g), F.S., will require a sexual predator designation on a first offense. The bill provides that any violation of s. 787.06(3)(f) and (g), F.S., will require registration as a sexual predator if the offender has another qualifying offense.

Under current law, s. 787.06(3)(f) and (g), F.S., which generally relate to human trafficking for commercial sexual activity, do not require an offender to be designated as a sexual predator based solely on a single conviction for either offense. Instead, both ss. 787.06(3)(f) and (g), F.S., require an offender to have a specified prior sexual offense conviction before he or she is required to be designated as a sexual predator upon such a conviction.

The bill is effective October 1, 2024.

⁴⁹ Section 794.011(1)(b), F.S., defines “mentally defective” as a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

⁵⁰ Section 794.011(1)(c), F.S., defines “mentally incapacitated” as 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.

⁵¹ Section 787.06(3)(g), F.S. A life felony is generally punishable by life imprisonment or by a term of imprisonment not exceeding 40 years. Section 775.082, F.S.

⁵² Section 787.06(4)(a), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on the courts. The bill is increasing the age for the child hearsay exception which may lead to an increase in court proceedings and appeals.⁵³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁵³ Office of the State Courts Administrator *2024 Judicial Impact Statement* of HB 305 (December 11, 2023), at 2 (on file with the Senate Committee on Criminal Justice).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 90.803 and 775.21.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on January 10, 2024:

The committee substitute:

- Provides that only a person convicted of a specified human trafficking offense for commercial sexual activity, where the victim is a minor will automatically be designated as a sexual predator.
- Provides that a person's prior specified human trafficking conviction can still serve as a predicate offense for sexual predator designation should the person commit an additional sexual offense.

- B. **Amendments:**

None.