

A Review of the Soliciting for Prostitution Public Database

Report 22-10

December 2022



OPPAGA

Office of Program Policy Analysis and Government Accountability

A Review of the Soliciting for Prostitution Public Database

EXECUTIVE SUMMARY

Prostitution is treated as a minor offense in Florida and nationally, with arrest rates declining significantly since 2000. During the same period, the focus of policymakers has shifted to controlling commercial sex trafficking and its links to prostitution. To reduce demand for prostitution, many jurisdictions employ tactics aimed at sex buyers. These tactics include the use of public shaming to deter would-be sex buyers and discourage reoffending.

Several provisions in Florida statutes criminalize prostitution and are variously aimed at prostitutes, sex buyers, and sex distributors. One statutory subsection (s. 796.07(2)(f), *Florida Statutes*) makes it unlawful to solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.¹ One of the more severe consequences for convictions of this subsection is being added to the Soliciting for Prostitution Public Database.

OPPAGA's review of the database found that the Florida Department of Law Enforcement's (FDLE) implementation was a multi-step process involving delays in individuals appearing in the database. Some characteristics of the database limit its effectiveness as a strategy to reduce demand for prostitution. These characteristics include a lack of awareness of the database by some members of the criminal justice community and the limited information that it provides.

The Legislature may consider several options regarding the future of the database. The Legislature could eliminate the database due to its characteristics which may limit effectiveness, by taking no action to prevent its statutory repeal January 1, 2024. Alternatively, the Legislature and FDLE could make improvements to the database, such as expanding the information included. In either event, the Legislature may wish to consider other statutory changes that could reduce the demand for prostitution by focusing on sex buyers. These changes include increasing the penalty for a first offense to a felony, condensing and clarifying current statutory subsections, and taking additional steps to change the perception of prostitutes from criminals to victims of coerced commercial sex and to criminalize those who purchase sex.

REPORT SCOPE

As directed by s. 943.0433, *Florida Statutes*, OPPAGA reviewed the Soliciting for Prostitution Public Database, including the administration, policies, and procedures of the database, as well as whether the database prevents and deters human trafficking networks and individuals who aid and abet such networks from operating in Florida.

¹ Assignation means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.

INTRODUCTION

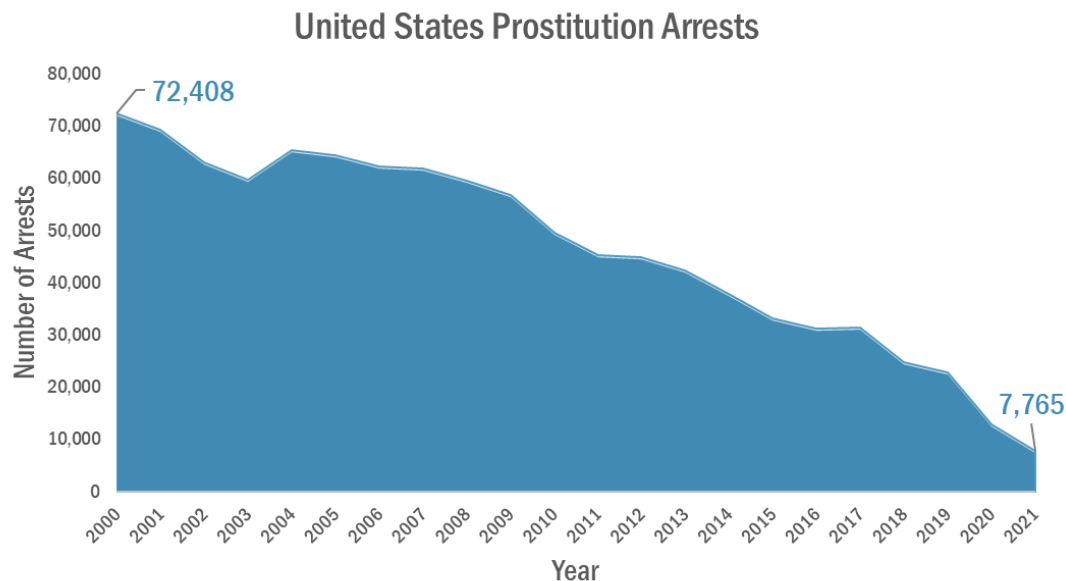
Prostitution is treated as a minor offense in the United States, and arrests have declined substantially since 2000

In almost every state, prostitution is a misdemeanor offense; arrests have declined 89% since 2000. With the exception of some counties in Nevada, laws across the country prohibit the selling and buying of sexual services and related activities and authorize policing, arrest, and conviction for these acts. Underlying this approach is the characterization of prostitution as a public nuisance associated with community deterioration and other criminality. In all states except Texas, prostitution is a misdemeanor.²

Over the last 20 years, there has been a marked decrease in the number of arrests for prostitution offenses, which target both buyers and sellers, nationally and in Florida. (See Exhibit 1.) Examining arrest data from 2019, prior to the effects of the COVID-19 pandemic, Florida's arrest rate for prostitution offenses (9.5 arrests per 100,000 population) ranked fifth nationally. (See Appendix A.) Prostitutes, rather than sex buyers (i.e., johns) or sex distributors (i.e., pimps or traffickers), make up the majority of those arrested for prostitution.

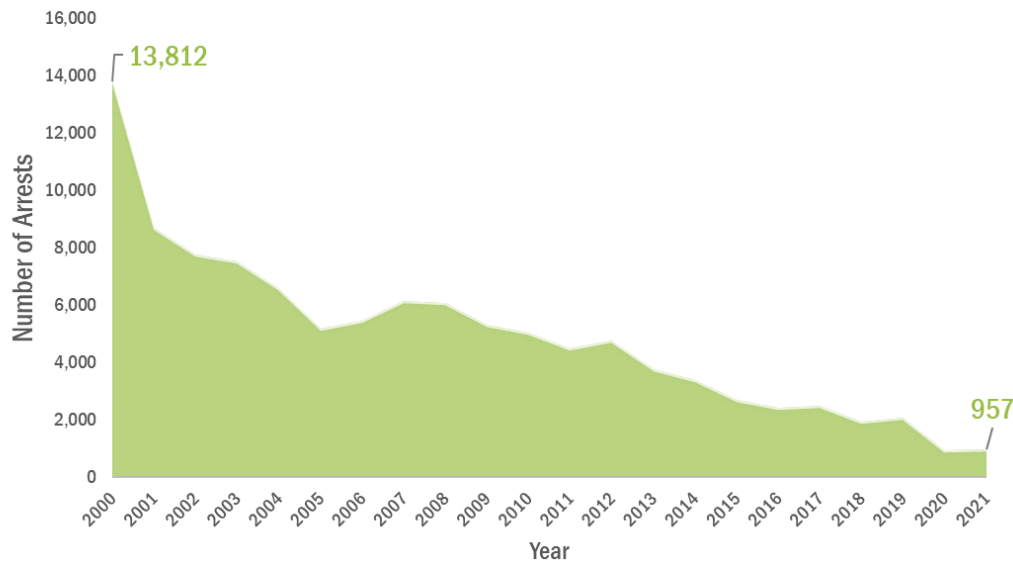
Exhibit 1

Arrests for Prostitution Offenses in the United States and Florida Have Declined Substantially Since 2000



² In June 2021, the Texas Legislature passed House Bill 1540, which increased the solicitation of prostitution to a felony and increased the penalty for this third degree felony from 2 to 10 years in prison and a fine up to \$10,000 for a first offense.

Florida Prostitution Arrests



Source: OPPAGA analysis of data from the Federal Bureau of Investigation's Crime Data Explorer and the Florida Department of Law Enforcement's Uniform Crime Reports.

As early as the 1990s, prostitution enforcement was declining in many jurisdictions and law enforcement entities were eliminating squads that focused on public-order crimes like illegal gambling, narcotics, illegal sales of alcohol, and prostitution. Rather than reduce the commercial sex trade, some cities found that arrests of prostitutes served only to contain the practice to areas where it was visible or displace prostitution to a neighboring jurisdiction. Further, commercial sex markets have shifted online, and law enforcement may be receiving fewer complaints from citizens about observed commercial sex in neighborhoods.

The focus of policymakers and law enforcement has shifted to sex trafficking and its links to prostitution, including an emphasis on reducing demand. While enforcement of existing prostitution laws has declined, policy makers have recently expressed concern about commercial sexual exploitation, commonly known as sex trafficking. This focus has resulted in the federal government and all 50 states passing anti-human trafficking legislation informed by an abolitionist view of prostitution where people who are forced or coerced to sell sex are redefined as victims. Since prostitutes and trafficked victims share a customer base, reducing demand for all commercial sex is viewed as a means to control human trafficking. This can result in strategies aimed at further reducing the demand for prostitution.

There are many tactics used to reduce demand for prostitution, some employed at the time of arrest and others after adjudication. Tactics used at the time of arrest include reverse stings and seizing sex buyers' vehicles. In a reverse sting, law enforcement employ officers as decoys, posing as prostitutes. Would-be sex buyers respond to an advertisement for prostitution, often placed by law enforcement on the internet. When the sex buyer arrives at the arranged location, commonly a hotel room monitored by law enforcement, they are arrested. Law enforcement may also seize the vehicle the sex buyer used to get to the hotel or other meeting place.

Demand reduction tactics used after arrest include education programs, also known as john schools, which aim to educate sex buyers about the negative effects of prostitution. Curriculum for such schools may include health and legal consequences as well as the impacts on victims. Other post-adjudication demand reduction approaches include driver license suspensions, geographic restraining orders that prohibit offenders from going into certain areas, and community service programs such as cleaning up streets in known prostitution areas. There are also demand reduction approaches aimed at the public

at large or potential offenders rather than individual offenders. These include public education and awareness campaigns, neighborhood action initiatives such as citizen patrols, and surveillance cameras used to discourage sex buyers.

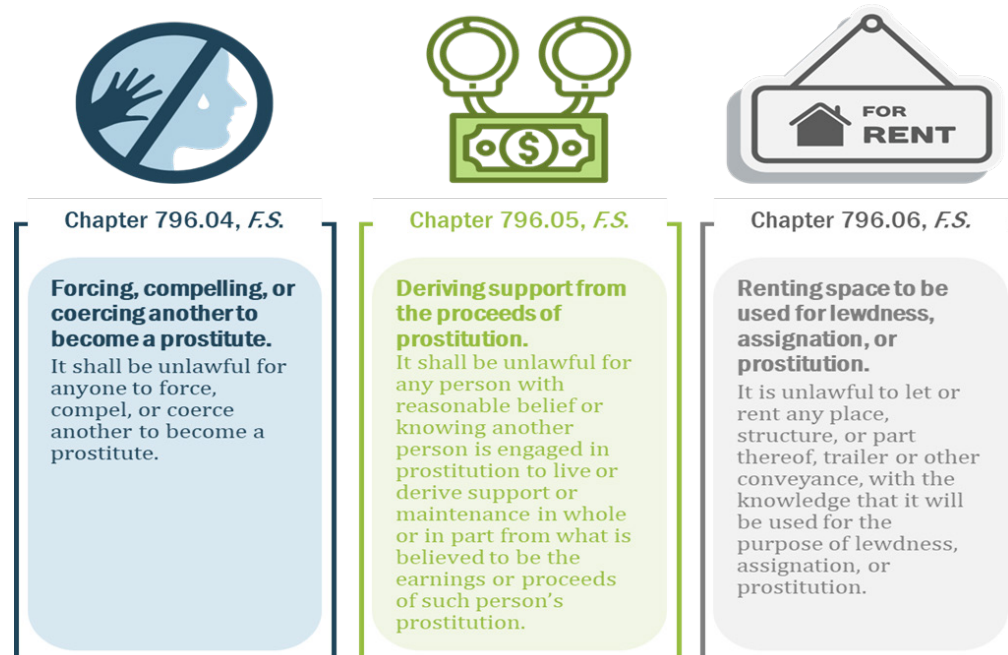
Public shaming is another demand reduction tactic used in many jurisdictions. Public shaming can include strategies such as law enforcement publicizing the arrest of sex buyers through press releases or website content. This type of publicity is often done in conjunction with reverse sting operations. Another shaming technique used by some jurisdictions involves sending letters to the homes of known or suspected sex buyers. One variant of this approach, also known as a Dear John letter, involves sending letters to the owners of vehicles observed cruising in areas known for street prostitution. Another variation includes sending letters to the homes of individuals arrested for buying sex. Both types of Dear John letters are believed to deter sex buying by making those who live with the recipient aware of their behavior. Literature suggests that public shaming of sex buyers may have a deterrent effect. In a 2008 study, 87% of men surveyed listed having their photo and name in the local paper as the consequence that would most deter them from buying sex. This was followed with 83% of men surveyed citing jail time, photo and/or name on a billboard, and 82% photo and/or name on the internet as deterrents.³

Several provisions in Florida statutes prohibit prostitution; the provisions are aimed at various participants in the sex trade and penalties differ by violation

Chapter 796, *Florida Statutes*, is the primary section of Florida statutes addressing prostitution. The chapter provides for the criminalization of various acts under the general category of prostitution and establishes penalties for violations. It includes multiple sections, directed variously at prostitutes, sex buyers, or suppliers of commercial sex. (See Exhibit 2.)

Exhibit 2

Chapter 796, *Florida Statutes*, Prohibits Various Prostitution Related Activities



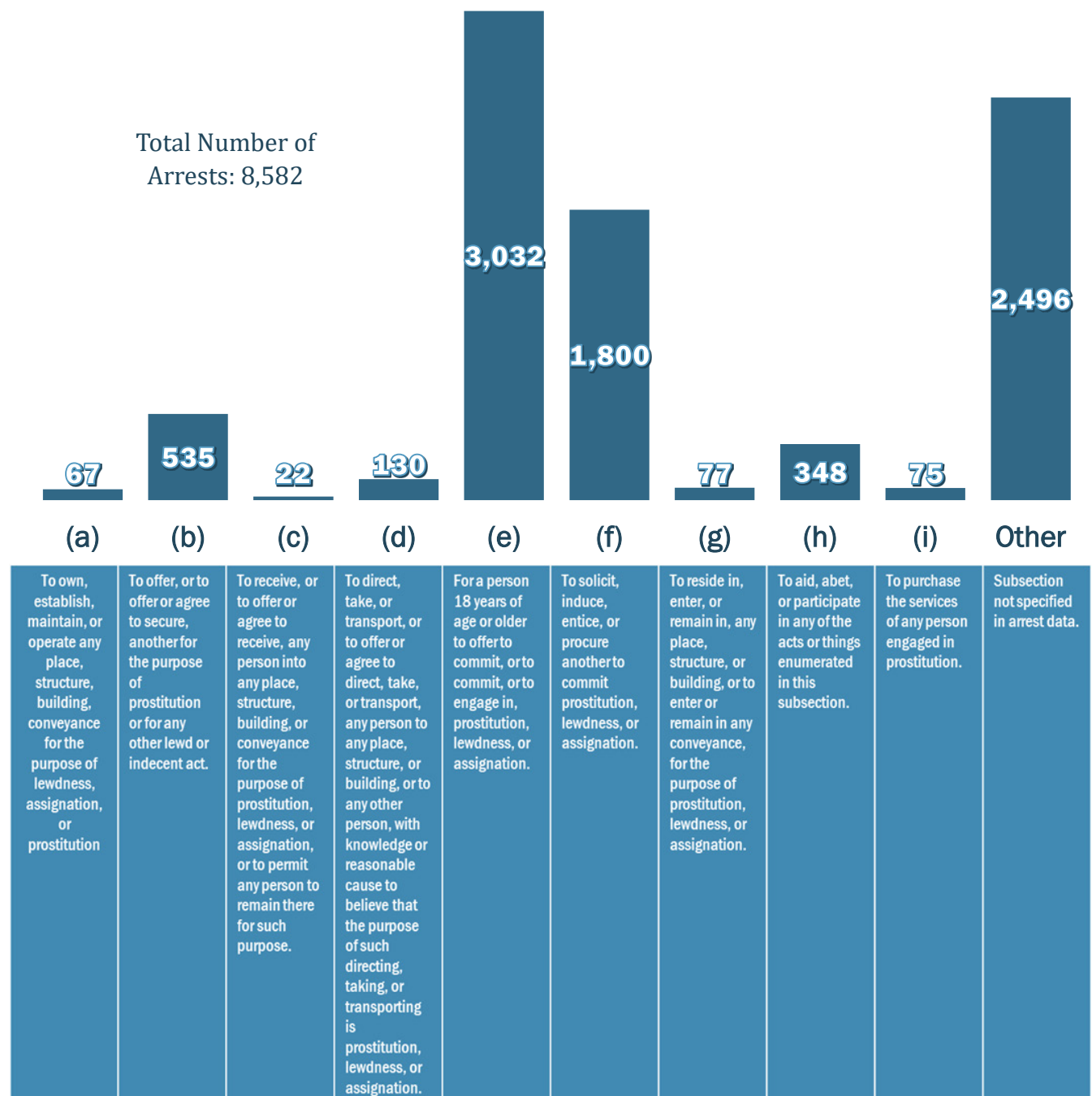
Source: Florida statutes.

³ Durchslag, Rachel, and Samir Goswami. (2008). [*Deconstructing the Demand for Prostitution: Preliminary Insights From Interviews with Chicago Men Who Purchase Sex*](#). Chicago, IL: Chicago Alliance Against Sexual Exploitation.

Additionally, section 796.07, *Florida Statutes*, contains multiple provisions prohibiting prostitution and related acts, which are aimed at various participants in the commercial sex trade. Law enforcement has made over 8,500 arrests under this section since January 2017. Of the arrests with a subsection specified, most (3,032) were made under the subsection (e) directed at prostitutes, while 1,800 were made under the subsection (f) directed at sex buyers. (See Exhibit 3.)

Exhibit 3

Over 8,500 Arrests Were Made Under s. 796.07, *Florida Statutes*, From January 2017 Through August 2022



Note: The other category includes cases where the subsection is missing in arrest data or the statutory reference is to the penalty subsection of statute (s. [796.07\(5\)\(a\)](#), *F.S.*) which does not specify the particular subject of violation.

Source: OPPAGA analysis of Florida Department of Law Enforcement criminal history data from January 1, 2017, through August 31, 2022.

One subsection makes it unlawful to solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation. Individuals convicted under s. 796.07(2)(f), *Florida Statutes*, face more severe penalties than those convicted under the other subsections. (See Exhibit 4.) Several law enforcement agencies and state attorneys reported that this is the provision under which most sex buyers are arrested and charged, although some prostitutes are also charged under this section.⁴ The penalties for this subsection include demand reduction approaches, such as required education classes.

Exhibit 4

Subsection 796.07(2)(f), *Florida Statutes*, Has More Severe Penalties Than Other Subsections

s. 796.07(2)(a)(b)(c)(d)(e)(g)(h)(i), <i>F.S.</i> Associated Penalties	s. 796.07(2)(f), <i>F.S.</i> Associated Penalties
<div data-bbox="180 562 680 800"> 1 FIRST OFFENSE 2ND DEGREE MISDEMEANOR punishable as provided in s. 775.082 or s. 775.083, \$500 fine ➤ <i>Term of imprisonment not > 60 days</i> </div> <div data-bbox="180 808 680 1031"> 2 SECOND OFFENSE 1ST DEGREE MISDEMEANOR punishable as provided in s. 775.082 or s. 775.083, \$1,000 fine ➤ <i>Term of imprisonment not > 1 year</i> </div> <div data-bbox="180 1039 680 1371"> 3 THIRD OR SUBSEQUENT OFFENSE 3RD DEGREE FELONY punishable as provided in s. 775.082, s. 775.083, or s. 775.084, \$5,000 fine and shall be offered admission to a pretrial intervention program or a substance abuse treatment program as provided in s. 948.08. ➤ <i>Term of imprisonment not > 5 years</i> </div>	<div data-bbox="727 562 1281 787"> 1 FIRST OFFENSE 1ST DEGREE MISDEMEANOR punishable as provided in s. 775.082 or s. 775.083, \$1,000 fine ➤ <i>Term of imprisonment not > 1 year</i> </div> <div data-bbox="727 808 1281 1010"> 2 SECOND OFFENSE 3RD DEGREE FELONY punishable as provided in s. 775.082, s. 775.083, or s. 775.084, \$5,000 fine ➤ <i>Term of imprisonment not > 5 years</i> </div> <div data-bbox="727 1031 1281 1207"> 3 THIRD OR SUBSEQUENT OFFENSE 2ND DEGREE FELONY punishable as provided in s. 775.082, s. 775.083, or s. 775.084, \$10,000 fine ➤ <i>Term of imprisonment not > 15 years</i> </div> <div data-bbox="792 1228 1203 1333"> SECOND OR SUBSEQUENT OFFENSE Minimum Mandatory 10 Days Incarceration </div> <div data-bbox="727 1346 1281 1522"> Those convicted of violating the subsection must also perform 100 hours of community service; pay for and attend an educational program about the negative effects of prostitution and human trafficking, if available; and pay \$5,000 civil penalty. </div> <div data-bbox="727 1543 1281 1606"> A judge may also order the vehicle impounded for up to 60 days. </div> <div data-bbox="727 1619 1281 1745"> Additionally, for certain persons if there is evidence that they provided a form or payment or arranged for payment, they will be included in the Soliciting for Prostitution Public Database. </div>



Source: OPPAGA analysis of Florida statutes.

⁴ OPPAGA conducted interviews with four state attorneys, five local law enforcement agencies, and five clerks of court.

Under s. 796.07(2)(f), *Florida Statutes*, a person found guilty at trial or who enters a plea of guilty or nolo contendere, regardless of whether adjudication is withheld, must be included in the Soliciting for Prostitution Public Database.⁵ The Legislature created the database in May 2019 with the passage of House Bill 851.⁶ The database is a demand reduction approach intended to help combat human trafficking through public shaming of those convicted of solicitation. The approach is aimed at sex buyers rather than prostitutes because it also requires evidence of payment or arrangement for payment. The Florida Department of Law Enforcement (FDLE) is required to publish the database online and is statutorily required to report certain information on the individuals included in the database. (See Exhibit 5.)

Exhibit 5

Florida Statutes Require the Soliciting for Prostitution Public Database to Include Certain Elements

Offense: s. 796.07(2)(f), F.S., Prohibiting prostitution and related acts.— To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.	
 <p>Color Photograph Photograph as contained in the criminal history or booking record of the individual</p>	<p>Full Legal Name Full name as recorded in the criminal history record provided by the clerk of court</p> <p>Last Known Address Last known address as recorded in the criminal history record provided by the clerk of court</p>

Source: OPPAGA analysis of Florida statutes and Florida Department of Law Enforcement administrative rules.

FINDINGS

After a multi-step implementation process, FDLE experienced delays in adding individuals to the Soliciting for Prostitution Public Database

FDLE designed the database to populate with information contained in existing data systems and conducts reviews of records to determine eligibility for inclusion

FDLE officials reported that after passage of House Bill 851 in May 2019, the department began **planning for database implementation**. The bill set an effective date of January 1, 2021. The department's planning activities included promulgating rules to define statutory requirements and select data sources. (See Appendix B.) The department also worked to design a process to collect information on the individuals included in the database from multiple sources and review it before posting to the database.

⁵ Pursuant to s. 948.01, F.S., the court has the ability to withhold adjudication after imposing probation if the defendant is found unlikely to again engage in criminal conduct, thereby limiting the consequences of a criminal conviction.

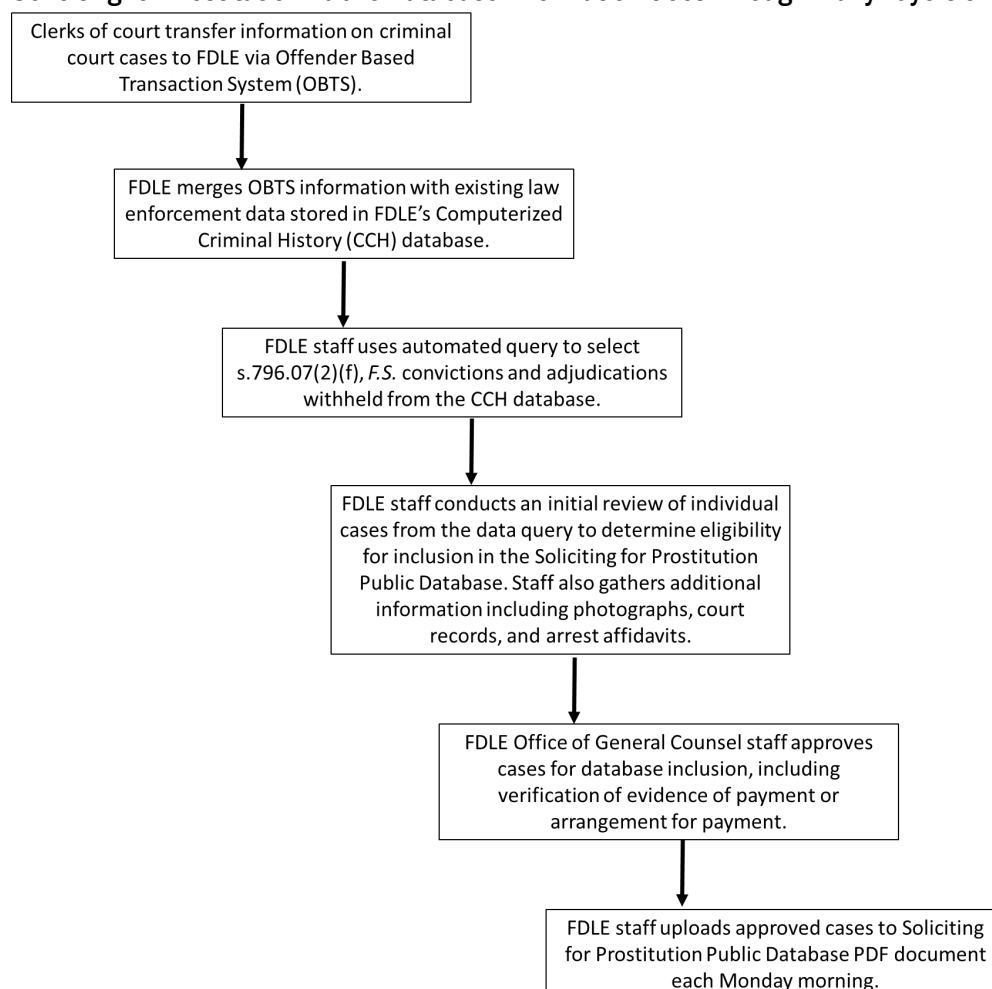
⁶ It appears that Florida is the only state with a database for those convicted of solicitation, though the Ohio Legislature considered a bill to implement a similar database in 2021. Other related activities are taking place at the local level. For example, the City of Dayton, Ohio, has a [Buyer's Remorse](#) website and targeted online ads, which list men convicted of buying sex in the community. Further, some communities report prostitution arrests, with the Chicago Police Department using a [website](#) that allows users to view public records of individuals who have been arrested for soliciting prostitutes or other related arrests during the past 30 days. In Florida, the Orange County Sheriff's Office has a prostitution arrest [website](#) with names, dates of birth, and charges.

Data Collection: Statute specifies that the source of the criminal history information for the database be the clerks of court. After exploring available data sources, FDLE decided to use existing information from its Computerized Criminal History (CCH) system as the source of arrest data. The CCH system is a fingerprint-based repository that collects electronic adult arrest information from law enforcement and criminal justice agencies across the state. Additionally, CCH incorporates data elements about court events from the clerks of court's Offender Based Transaction System. The department created a query to pull information related to arrests and convictions under s. 796.07(2)(f), *Florida Statutes*, out of CCH into an existing internal tracking system that FDLE uses to populate the database. (See Exhibit 6.) However, these datasets do not contain photographs. The department obtains photographs from the Biometric Identification System, which provides fingerprint identification and includes images such as booking photos.

Information Review and Database Posting: FDLE staff conducts an initial review of cases identified by the query to determine eligibility for inclusion. Staff also gathers additional information including photographs, court records, and arrest affidavits. After all of the required data elements are in the tracking system, FDLE attorneys confirm that the case meets the requirements for inclusion in the database. This includes reviewing related case documents, such as arrest affidavits, to determine that there is evidence that the individual provided a form of payment or arranged for payment for services. Once reviewed and approved, new entries are added to the document each Monday, regardless of offense date or when the information was originally pulled from CCH.

Exhibit 6

Soliciting for Prostitution Public Database Information Goes Through Many Layers of Selection and Review



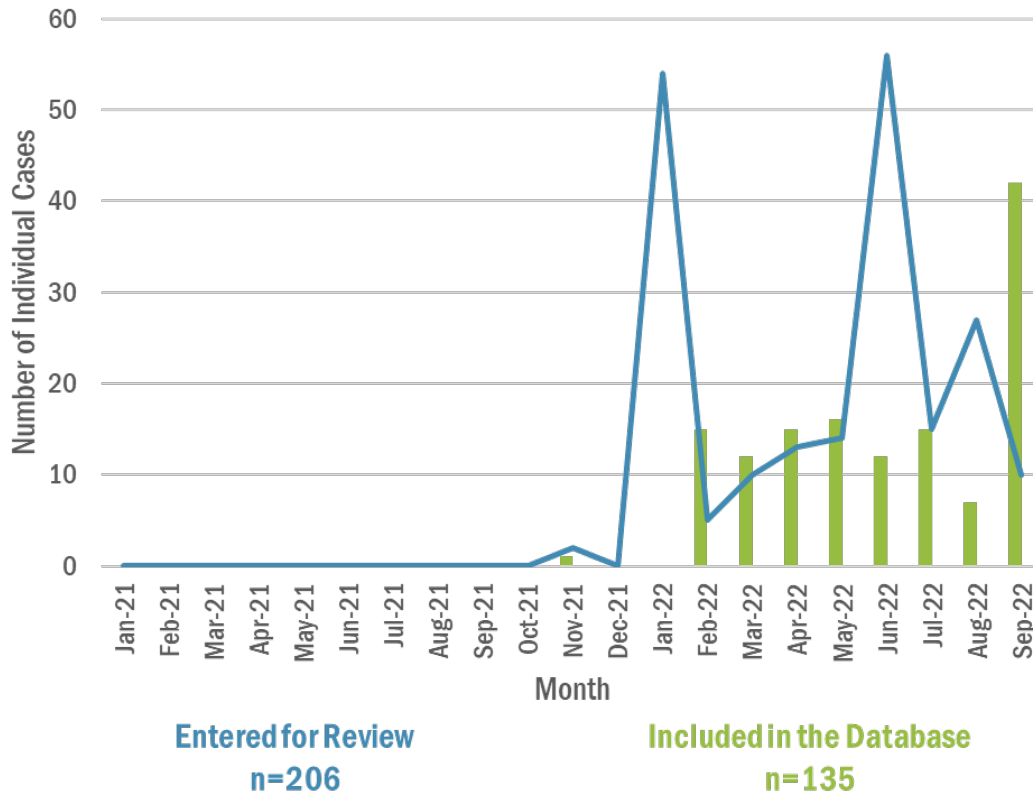
Source: OPPAGA analysis of Florida statutes and Florida Department of Law Enforcement administrative rules.

FDLE experienced delays in populating the database, with no individuals added until 11 months after the effective date

While FDLE posted the database on its website in January 2021, it did not contain any information until November 2021. The department began querying CCH to populate the database in January 2021, but was not receiving information on individuals convicted under s. 796.07(2)(f), *Florida Statutes*. Department officials reported that they believed the initial lack of convictions was due to the pandemic's effects on the criminal justice system, namely the backlogs in the courts. After further review, in October 2021 the department identified and fixed an error in the data query. This resulted in the query returning conviction results. Exhibit 7 shows the flow of cases into the system for review and then into the database beginning in November 2021, when one individual was added to the database. Through September 2022, FDLE staff reviewed 204 individuals for database inclusion and added 134 individuals to the database.

Exhibit 7

Only One Individual Was Added to the Soliciting for Prostitution Public Database in 2021; 134 Individuals Were Added Through September 2022



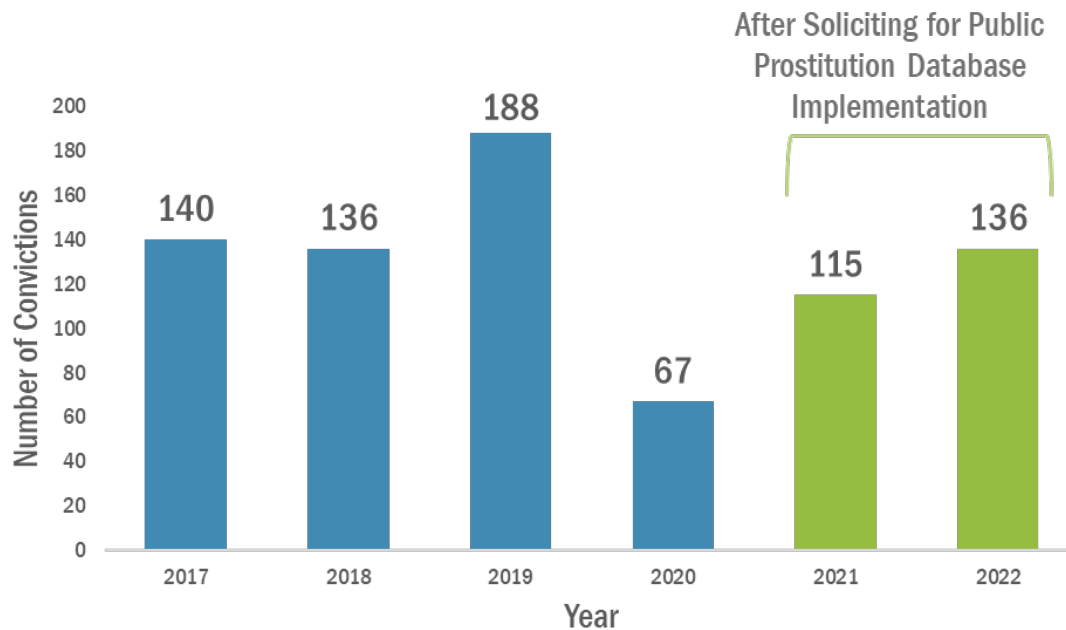
Source: OPPAGA analysis of Florida Department of Law Enforcement data.

The database currently contains over half of s. 796.07(2)(f), *Florida Statutes*, convictions

Very few arrested individuals move through the judicial process and are found guilty or have their adjudication withheld, a requirement to be included in the database. Specifically, only 21% of the individuals arrested for or subsequently charged with a violation of s. 796.07(2)(f), *Florida Statutes*, were found guilty or had their adjudication withheld from January 1, 2022, through August 31, 2022. The number of convictions has been under 200 each year, ranging from 67 in 2020 to 188 in 2019. (See Exhibit 8.)

Exhibit 8

Few Individuals Were Convicted of or Had Their Adjudication Withheld Under s. 796.07(2)(f), *Florida Statutes*



Note: Data for 2022 is from January 1, 2022, through August 31, 2022.

Source: OPPAGA analysis of Florida Department of Law Enforcement criminal history data.

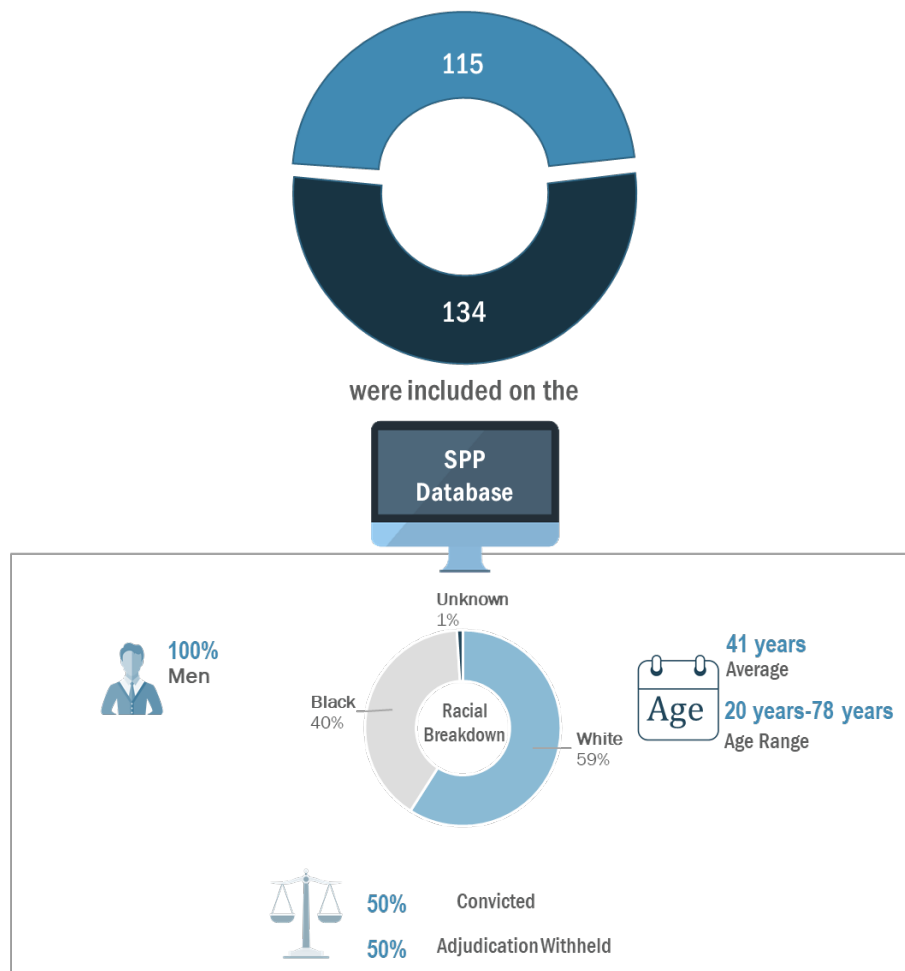
OPPAGA's analysis of FDLE criminal history data since database implementation in January 2021 found that 249 individuals were convicted or had their adjudication withheld under s. 796.07(2)(f), *Florida Statutes*.⁷ Of these offenders, 134 (54%) were listed on the Soliciting for Prostitution Public Database. (See Exhibit 9.) All individuals on the database are men, with an average age of 41 years old. Most (59%) are White, 40% are Black, and 1% are of unknown racial identity. Half of the men on the database were convicted under s. 796.07(2)(f), *Florida Statutes*, whereas the other half had their adjudication withheld.

⁷ Of the 249 individuals who were convicted or had their adjudications withheld under s. [796.07\(2\)\(f\), F.S.](#), from January 1, 2022 through August 31, 2022, 2 individuals were convicted for two separate incidents, resulting in a total of 251.

Exhibit 9

Over Half of the Individuals Convicted or Whose Adjudication Was Withheld Under s. 796.07(2)(f), *Florida Statutes*, Are on the Soliciting for Prostitution Public Database

249 Individuals Were Convicted or Had Adjudication Withheld of s. 796.07(2)(4), *F.S.*, From January 1, 2021 Through August 31, 2022



Source: OPPAGA analysis of Florida Department of Law Enforcement criminal history data.

There are several reasons why individuals may not be included in the database. To be included in the database, the additional criteria of evidence of payment or arrangement for payment must be met; this requirement is intended to focus on sex buyers and keep prostitutes out of the database. Consequently, during the review process FDLE attorneys must be able to find evidence of payment or the arrangement for payment in the court records for the individual to be included in the database. For example, attorneys may review arrest affidavits for a description of the agreed upon payment or documentation that the buyer brought payment to the planned meeting. According to FDLE, there were approximately 26 individuals not included in the database because there was no evidence of payment or arrangement of payment.

Further, the database does not include offenders arrested prior to 2021, even when the disposition of their case was after January 1, 2021. Of the 249 individuals OPPAGA identified as being convicted or adjudication withheld under s. 796.07(2)(f), *Florida Statutes*, 49 were arrested prior to January 1, 2021, but were convicted or had their adjudication withheld after January 1, 2021. None of these 49 individuals are included in the database. While the statute does not specify whether arrest date or conviction date should be considered in these instances, FDLE decided to exclude those arrested prior to January 1, 2021.

Finally, the FDLE review process can delay inclusion in the database. As of early October 2022, FDLE had 45 cases awaiting review. OPPAGA analysis of criminal history data indicates that as of October 2022, no individual convicted after July 2022 has been added to the database. In practice, this is a several months lag between conviction date and appearance on the database.

Some database characteristics limit its effectiveness in reducing demand for prostitution

While the database is intended to use public shaming to reduce demand for prostitution, various characteristics diminish this potential effect. We found that the database is unknown to some law enforcement, state attorneys, and clerks. Further, the limited information in the database diminishes the potential shaming effects by not providing the public with details about the offender or the timing or location of their offenses. The shaming effects of the database also vary by jurisdiction, since convictions in only a few Florida counties make up the vast majority of the records in the database.

There is a lack of awareness about the existence of the database among some stakeholders. OPPAGA's interviews with law enforcement, state attorneys, and clerks found that some of these stakeholders did not know about the database. Law enforcement could use the database as an additional demand reduction tactic if they are aware of it. For example, they could publicize the existence of the database in their local community, adding to the techniques many jurisdictions already utilize, such as press conferences and news releases about prostitution arrests.

The database is not well publicized. Specifically, FDLE has not issued press releases or other content about the availability of the database and the database is not referenced or linked on the department's main webpage as of November 2022. This is not consistent with the department's approach to publicizing other information sources. For example, the visibility of the database can be contrasted with the Career Offender Registry, which can be accessed from FDLE's main webpage.

The database file contains limited information. There are several examples in which the database file posted to FDLE's website lacks details that could have greater demand reduction impacts.

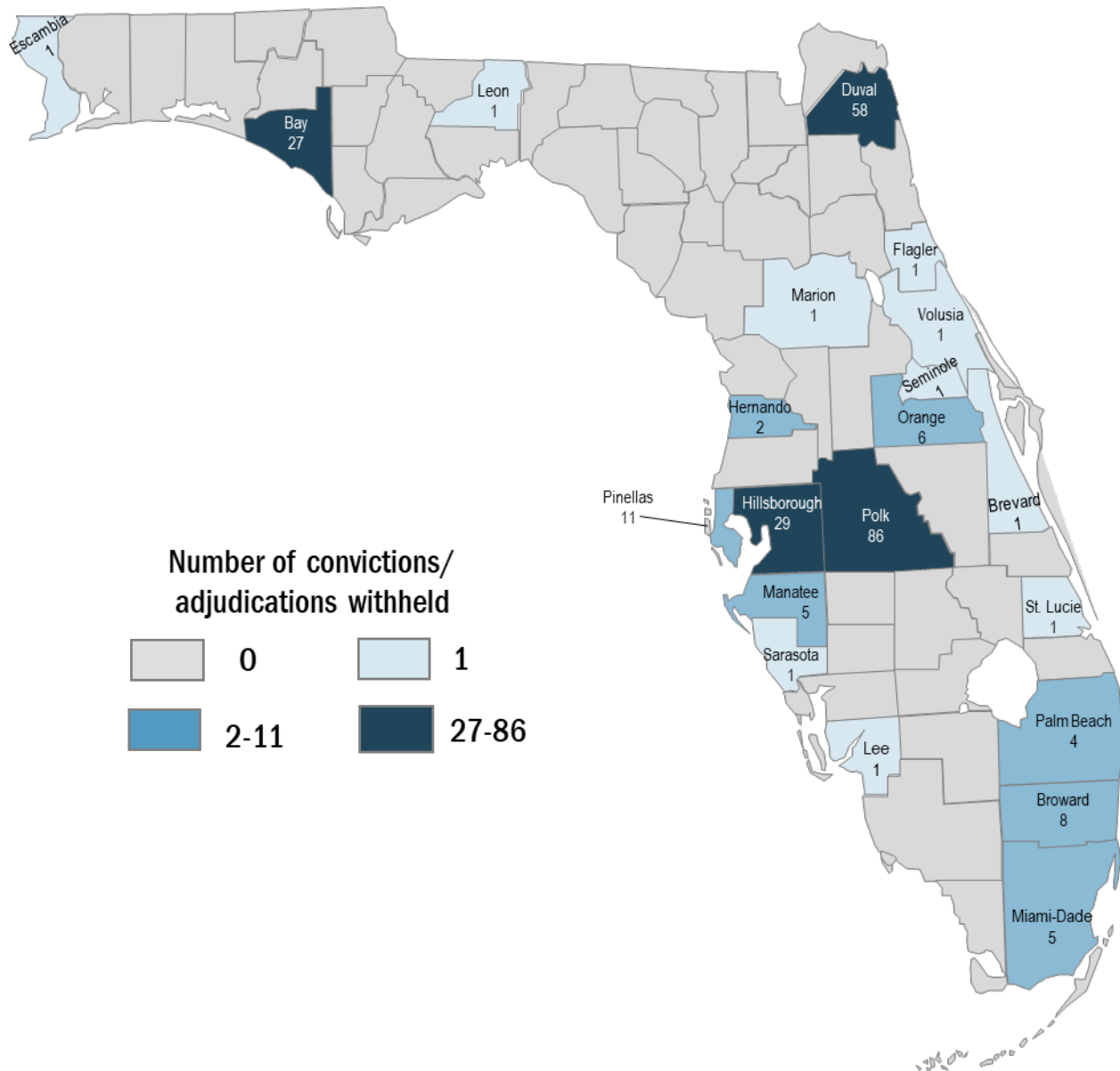
- *Statutory restrictions:* Statute specifies that the elements contained in the database are full name, last known address, and color photograph. These elements provide limited information about sex buyers in Florida. For example, the database file does not include date of arrest or conviction. Date of arrest in particular would help provide a more detailed profile of prostitution activity in a community and both dates could aid users in finding an individual listed on the database. Further, the database contains limited geographic information. The only location information required in the database is the individual's last known address. Arrest location could give the public an indication of the extent of prostitution occurring in their communities.
- *Implementation delays:* FDLE's administration of the database further limits the information available. The database contained no individuals until November of 2021, 11 months after the effective date. Consequently, for much of the time the database has been available it contained no information and no potential public shaming effects were possible.
- *Shortened time on database:* FDLE's review process can shorten the time an individual's information is available to the public. OPPAGA analysis of criminal history data indicates that as of October 2022, no individual convicted after July 2022 has been added to the database. Statute directs the department to automatically remove a person from the database if, after five years from the date of the commission of the offense they have not subsequently committed a sex offense or human trafficking violation. As a result of the review process, an individual's time actually appearing on the database is shortened because the time of inclusion goes back to offense date. For example, an individual who committed a qualifying offense six months before

his record appears on the database would have his overall time in the database reduced to four and a half years.

- *Geographic variability in enforcement of prostitution laws:* Available information is further limited by the variability in the arrest and prosecution of sex buyers across jurisdictions. Since January 2021, only 21 counties have had individuals convicted or adjudications withheld under s. 796.07(2)(f), *Florida Statutes*. (See Exhibit 10.) During this period, there were 793 arrests and 251 convictions or adjudications withheld statewide.

Exhibit 10

Only 21 Counties Had Any Individuals Convicted or Adjudications Withheld Under s. 796.07(2)(f), *Florida Statutes*, Since January 2021



Source: OPPAGA analysis of Florida Department of Law Enforcement data.

More than 80% of the individuals in the database were arrested in four counties (Polk, Bay, Duval, and Hillsborough) and, overall, only nine counties are represented in the database. (See Exhibit 11.) As a result, most counties are not included in the database, limiting its potential usefulness as a statewide demand reduction tool.

Exhibit 11

Most Individuals on the Soliciting for Prostitution Public Database Were Arrested in Four Counties

County	Arrests
Polk	43
Bay	33
Duval	30
Hillsborough	21
Pinellas	6
Broward	4
Orange	3
Manatee	1
Volusia	1

Source: OPPAGA analysis of Florida Department of Law Enforcement data.

Broader criminal justice trends may also have an impact. There has been an overall decline in misdemeanor arrests in the past decade. Additionally, arrests dropped sharply after initial COVID-19 restrictions and rebounded slightly beginning in June 2020, but remain below their pre-COVID-19 levels. These trends illustrate that overall declines in misdemeanor arrests and convictions may help explain the decreases in prostitution arrests and convictions across the study period.

The database has limited utility. The design of the database file posted on the FDLE website limits its functionality. The posted database file is a static PDF. Individuals are added to the database file after they are approved via the review process. As a result, the database file is not organized in a systematic order, such as alphabetically by legal name or chronologically by arrest or conviction date, and it may be difficult for users to locate a person on the database. Additionally, the current format does not allow users to query the database. For example, users cannot produce a listing of individuals on the database who live in their zip code, a functionality FDLE provides in the Career Offender Registry. Members of the public attempting to use the database to find an individual or to assess the extent of prostitution in their communities will find the database difficult to search and lacking detail.

OPTIONS

Given the potential limitations of the Soliciting for Prostitution Public Database on reducing demand for prostitution, the Legislature may wish to consider eliminating the database. Alternatively, the Legislature and the Florida Department of Law Enforcement could modify the database to improve its effectiveness in reducing demand. In either event, the Legislature may wish to consider other statutory changes to focus state attorneys and law enforcement efforts on reducing demand for prostitution.

Eliminate the database

Section 943.0433(6), *Florida Statutes*, provides for the automatic repeal of the database on January 1, 2024, unless reviewed and saved from repeal through reenactment by the Legislature. Given the multiple characteristics of the database that limit its potential to reduce demand for prostitution, the Legislature could eliminate the database by taking no action. Database limitations and other factors potentially affecting prostitution arrests and convictions make it difficult to demonstrate the effectiveness of the database in reducing prostitution or its ability to prevent and deter human trafficking networks and individuals who aid and abet such networks from operating in Florida.

Retain the database with improvements

FDLE could take several actions to better inform the public and stakeholders about the existence of the database and improve its utility. For example, the department could feature the database on its main webpage and send routine press releases about the database. Further, the department could coordinate other public information activities such as working with local law enforcement to publicize the database on local websites and in press releases.

FDLE could also modify the format of the database file to make it easier for users to find information. For example, changing to a format that allows users to query on different data elements would make the database more informative for the public. If the department retains the current static format, it should consider placing the individuals on the database in alphabetical order by legal name or by arrest or conviction date. Finally, the Legislature could require the department to include additional database elements. For example, requiring arrest location could better inform database users of prostitution in their communities.

Make statutory changes that may reduce demand for prostitution

Whether the Legislature decides to retain the database or not, it may wish to consider statutory changes to better focus on reducing the demand for prostitution. This could involve various approaches. For example, the Legislature could increase the penalty for a first offense of solicitation to a felony. In June 2021, the Texas Legislature passed House Bill 1540 in an attempt to shift punitive blame away from prostitutes by increasing the penalty for paying for prostitution to a maximum of two years in prison for a first offense with the intent of decreasing demand to curb human trafficking.

The Legislature could also consider reviewing and amending Ch. 796, *Florida Statutes*, to focus statutes on reducing the demand for prostitution and clarifying the distinction between sex sellers and buyers through condensing provisions or refining language. For example, statutes could be amended so that prostitutes cannot be arrested or charged under s. 796.07(2)(f), *Florida Statutes*, which carries greater penalties. Changes such as these help clarify that the greater penalties of s. 796.07 (2)(f), *Florida Statutes*, are intended to reduce demand by focusing on sex buyers. It would also eliminate the necessity for FDLE to review convictions for evidence of payment before inclusion in the database, as all convictions would be of sex buyers.

The Legislature could also consider taking further steps to comport with the goals of the federal Victims of Trafficking and Violence Protection Act and other countries to change the perception of prostitutes to victims of coerced commercial sex and criminalize those who purchase sex.⁸ For example, throughout the 1990s in Sweden, growing concern about sex trafficking led to an ideological shift of viewing all prostitution as exploitation. As a result, in 1998 Sweden criminalized the purchase and decriminalized the sale of sexual services. The Swedish model prioritizes help for prostitutes who want to leave the sex trade. Several countries have since passed similar legislation, including Canada, France, Iceland, Israel, Northern Ireland, Norway, and the Republic of Ireland.

In any review of the database, the Legislature may wish to consider potential legal challenges. The Senate analysis of the bill creating the database found that the courts may determine that the purpose of the database is to establish a civil regulatory scheme. However, if the courts further determined that the database is punitive in purpose or effect, the intent to establish a civil regulatory scheme would be negated and the database could be held unconstitutional. Additionally, the database could be subject to legal challenge based on FDLE's role in determining evidence of payment or arrangement of payment before including an individual in the database, since it is not an element of s. 796.07(2)(f), *Florida Statutes*, and the court is not making this determination.

⁸ Current Florida human trafficking statutes codify this intent in s. [787.06\(1\)\(d\)](#), *F.S.*, which states that it is the intent of the Legislature that the perpetrators of human trafficking be penalized for their illegal conduct and that the victims of trafficking be protected and assisted by the state and its agencies.

AGENCY RESPONSE

In accordance with the provisions of s. 11.51(2), *Florida Statutes*, OPPAGA submitted a draft of this report to the Florida Department of Law Enforcement for review and response. The department's written response is in Appendix C.

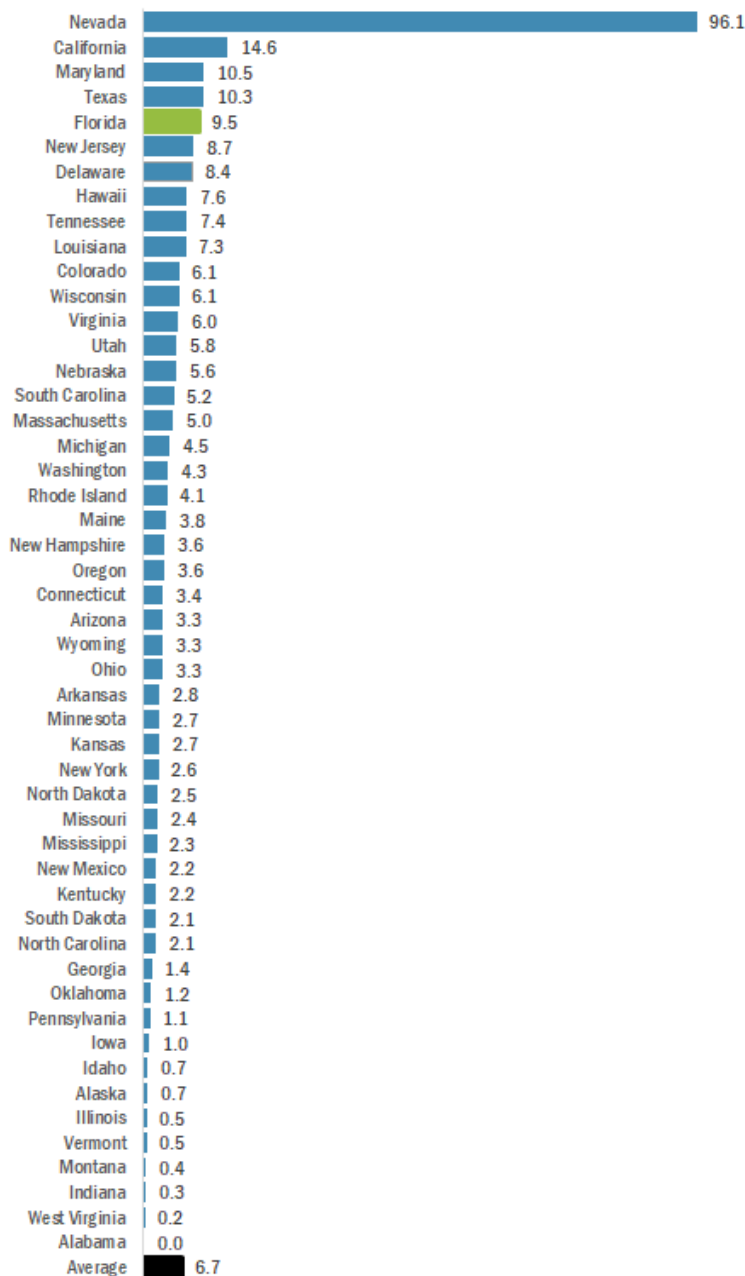
APPENDIX A

Florida's Arrest Rate for Prostitution-Related Offenses Is Higher Than Most States and the National Average

In 2019, prior to the effects of the COVID-19 pandemic on arrests, Florida had the fifth highest arrest rate for prostitution-related offenses at 9.5 arrests per 100,000 population. This is above the national average arrest rate of 6.7 arrests per 100,000.

Exhibit A-1

Prostitution Related Arrests by State per 100,000 Population in 2019



Source: OPPAGA analysis of Federal Bureau of Investigation data from *2019 Crime in the United States*, Table 69, and U.S. Census data from the *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2019*.

APPENDIX B

FDLE Promulgated Rules to Implement the Database

In May 2020, the Florida Department of Law Enforcement issued two rules related to the Soliciting for Prostitution Public Database. The rules define terms, specify sources of data, and establish the process to petition for removal from the database.

Exhibit B-1

Two Rules Define Terms and Specify Data Sources for the Soliciting for Prostitution Public Database

Fla. Admin. Code R. 11D-11.001 and 11.002 Soliciting for Prostitution Public Database

11D-11.001 Definitions.

(1) For implementation of this rule chapter the term “subsequently committed” as provided in Section 943.0433(2)(a), F.S. shall mean: having been found guilty as a result of a trial or having entered a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

(2) For implementation of this rule chapter the term “full legal name” as provided in Section 943.0433(3)(a), F.S. shall mean the full name as recorded in the criminal history record provided by the clerk of court pursuant to Section 796.07(5)(e), F.S.

(3) For implementation of this rule chapter the term “last known address” as provided in Section 943.0433(3)(b), F.S. shall mean the last known address as recorded in the criminal history record provided by the clerk of court pursuant to Section 796.07(5)(e), F.S.

(4) For implementation of this rule chapter the term “color photograph” as provided in Section 943.0433(3)(c), F.S. shall mean a photograph of the individual as contained in the criminal history or booking record of the individual if applicable.

Rulemaking Authority 943.03(4), 943.0433(4) FS. Law Implemented 943.0433 FS. History–New 5-5-20, Amended 5-20-21.

11D-11.002 Procedures.

(1) Upon receipt of a criminal history record that the clerk of court has determined to meet the requirements of Section 796.07(5)(e), F.S. for inclusion on the Soliciting for Prostitution Database, the Department shall add such record to the database as required by Section 943.0433(1), F.S.

(2) The Department shall remove a criminal history record from the database only upon satisfaction of the requirements in Section 943.0433(2), F.S. Petitioners seeking removal of the database shall submit a completed Petition for Removal from the Solicitation for Prostitution Database, form FDLE/SFPDB-01, revised 05/21, hereby incorporated by reference, <https://www.flrules.org/Gateway/reference.asp?No=Ref-13163>.

Rulemaking Authority 943.03(4), 943.0433(4) FS. Law Implemented 943.0433 FS. History–New 5-5-20, /Amended 5-20-21.

Source: The Florida Administrative Code.

APPENDIX C

Agency Response



Florida Department of
Law Enforcement

J. Mark Glass
Commissioner

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Ashley Moody, *Attorney General*
Jimmy Patronis, *Chief Financial Officer*
Nikki Fried, *Commissioner of Agriculture*

December 19, 2022

P.K. Jameson, Coordinator
Office of Program Policy Analysis & Government Accountability
111 West Madison Street, Room 312
Tallahassee, Florida 32399-1475

Dear Coordinator Jameson,

Thank you for the opportunity to review, comment, and suggest clarifications to your preliminary report entitled, "A Review of the Soliciting for Prostitution Public Database". Please see the enclosed notes and clarifications regarding this draft report.

FDLE will continue to work closely with the Clerks of Courts to ensure that the criminal history record of a person that meets the criteria set forth in section 796.07(5)(e), Florida Statutes is forwarded to FDLE for inclusion in the database.

FDLE will also ensure that the reported information from the Clerks of Courts is timely included in the database after appropriate review of the information to determine eligibility for inclusion.

Florida's Solicitation for Prostitution Public Database is a public safety tool. We look forward to continuing the strong state and local partnerships that help ensure this information is timely, accurate, and comprehensive for Florida's citizens and criminal justice professionals. Thank you for the time and attention your staff provided in the development of this report.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Mark Glass", is written over a horizontal line.

J. Mark Glass
Commissioner

Enclosure

Notes for Consideration

1. p. 1, paragraph 3, 1st sentence –

"OPPAGA's review of the database found that the Florida Department of Law Enforcement's (FDLE) implementation was a multi-step process involving delays in individuals appearing in the database."

Clarification: FDLE's implementation was a multi-step process to obtain the information necessary to determine an individual's eligibility for inclusion in the database.

2. p. 11, last paragraph, 1st sentence –

"Further, the database does not include offenders arrested prior to 2021, even when the disposition of their case was after January 1, 2021."

Clarification: FDLE will include offenders arrested prior to 2021 if disposition of their case occurs after January 1, 2021 and they meet the criteria for inclusion in the database.

3. p. 12, 1st paragraph, 1st sentence and last sentence –

"Finally, the FDLE review process can delay inclusion in the database."

"In practice, this is a several months lag between conviction date and appearance on the database."

Clarification: The FDLE review process includes seeking additional records and information for evidence of payment or the arrangement for payment in the criminal records for the individual as required by law for inclusion in the database.

4. p. 12, last paragraph, 1st sentence –

"FDLE's review process can shorten the time an individual's information is available to the public."

Clarification: FDLE's review process ensures that an individual's information meets the criteria for inclusion in the database. Conviction or plea to the criminal charges and evidence of payment or the arrangement for payment are required for inclusion in the database.

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OPPAGA

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