

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 523 Human Trafficking

**SPONSOR(S):** Toledo and others

**TIED BILLS:** HB 525 **IDEN./SIM. BILLS:** SB 812, SB 1826

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

### SUMMARY ANALYSIS

Human trafficking is modern day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person. Human trafficking is either a first degree felony or a life felony, and a person convicted of human trafficking must register as a sexual offender, but is not currently required to complete sex offender probation.

A human trafficking victim is authorized to petition a court for the expunction of his or her criminal history record resulting from an arrest or filing of charges for an offense committed or reported to have been committed while he or she was a victim of human trafficking, with the exception of certain offenses.

Florida provides several protections relating to the fair treatment of vulnerable victims and witnesses who are either minors or intellectually disabled which allow a judge to limit or prohibit depositions or in-person testimony of such victims or witnesses. Florida also protects communications between certain vulnerable persons, such as domestic violence or sexual assault victims, and victim advocates by specifying that such communications are privileged. Current law does not provide similar protections for a human trafficking victim.

In addition to the protections provided for victims during a trial, a state attorney may file a demand for speedy trial in a victim's case if the state has met its obligations under the rules of discovery and the court has granted at least three continuances requested by the defendant over the objection of the state attorney.

HB 523 creates a human trafficking victim advocate-victim privilege, mirroring the privilege provided for sexual assault and domestic violence advocates by providing that communication between a human trafficking victim advocate and a human trafficking victim is confidential when not intended to be disclosed to a third party other than specified persons. The bill prohibits any depositions from being taken in a prosecution for any human trafficking offense, unless good cause is shown with consideration of certain factors.

The bill authorizes a human trafficking victim to seek expunction of more than one offense committed while he or she was a victim of human trafficking, prohibits a clerk of court from charging any fees for a human trafficking victim's petition for expunction, and authorizes expunction of a human trafficking victim's driving record for citations received while he or she was a victim of human trafficking.

The bill requires a person convicted of specified acts of human trafficking to complete sex offender probation, and amends the victim's right to speedy trial by specifying that a defendant has a right to request an extension of the speedy trial timeframe. The bill also requires state attorneys to adopt a pro-prosecution policy for acts of human trafficking.

The bill may have a fiscal impact on the clerks of court by requiring that petitions for expunction by human trafficking victims be processed without charge.

The bill provides an effective date of July 1, 2021.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0523.CRM

**DATE:** 3/14/2021

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

Human trafficking is modern day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person.<sup>1</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 participating in a venture that has subjected a person to human trafficking for commercial sexual activity, labor, or services:

- By using coercion;<sup>2</sup>
- With or of a child younger than 18;<sup>3</sup> or
- If for commercial sexual activity, with a mentally defective<sup>4</sup> or mentally incapacitated<sup>5</sup> person.<sup>6</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>7</sup> and the production of pornography.<sup>8</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 services 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>9</sup> to a person for the purpose of exploiting that person.<sup>10</sup>

Human trafficking is a:

- First degree felony, punishable by up to 30 years in prison and a \$10,000 fine,<sup>11</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>12</sup>

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<sup>1</sup> S. 787.06(2)(d), F.S.

<sup>2</sup> S. 787.06(3)(b), F.S.

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

<sup>4</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>5</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>6</sup> *Id.*

<sup>7</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>8</sup> S. 787.06(2)(b), F.S.

<sup>9</sup> S. 893.03, F.S.

<sup>10</sup> S. 787.06(2)(a), F.S.

<sup>11</sup> Ss. 775.082 and 775.083, F.S.

<sup>12</sup> S. 787.06(3)(g), F.S.

Additionally, transferring or transporting a victim from another state into Florida for human trafficking is a first degree felony,<sup>13</sup> which is punishable by life if the transfer or transport was for sexual activity with a child.<sup>14</sup> A person convicted of human trafficking for commercial sexual activity must register as a sexual offender.<sup>15</sup>

### *Sexual Offender Probation*

Under S. 948.30, F.S., when a person is convicted of specified sexually-based offenses, a court must impose certain conditions as part of any term of supervision, such as a mandatory curfew, participation in sex offender treatment, prohibiting any contact with the victim, or restricting his or her use of the Internet.<sup>16</sup> While a person convicted of human trafficking must comply with the same registration requirements as a sexual offender, current law does not require such an offender to comply with sexual offender probation requirements.

### Human Trafficking Victim Expunction

In 2013, the Legislature created a process authorizing a victim of human trafficking to petition a court for the expunction of a criminal history record resulting from his or her arrest or filing of charges for an offense committed or reported to have been committed while he or she was a victim of human trafficking. For purposes of human trafficking victim expunction, "victim of human trafficking" means a person subjected to coercion<sup>17</sup> 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.

To be eligible for expunction, the criminal offense must be related to a human trafficking scheme of which the person was a victim or the offense must have been committed at the direction of an operator of the scheme,<sup>18</sup> and must not be one of the following 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, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery; or
- Aggravated stalking.

The court with original jurisdiction over the crime the human trafficking victim seeks to expunge is the court designated to hear the victim's petition.<sup>19</sup> A petition must be initiated by the petitioner with due diligence after he or she is no longer a victim of human trafficking or has sought human trafficking services.<sup>20</sup> The petition must be accompanied by the following:

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<sup>13</sup> S. 787.06(3)(f), F.S.

<sup>14</sup> S. 787.06(3)(f), F.S.

<sup>15</sup> S. 943.0435, F.S.

<sup>16</sup> Section 948.30(1)(b), F.S. The specified offenses include sexual battery (ch. 794, F.S.), lewd or lascivious offenses (s. 800.04, F.S.), promoting sexual performance by a child (s. 827.071, F.S.), traveling to meet a minor for the purpose of engaging in illegal sexual activity (s. 874.0135, F.S.) and selling or buying minors for child pornography (s. 847.0145, F.S.)

<sup>17</sup> As defined in s. 787.06, F.S.

<sup>18</sup> S. 943.0583, F.S.

<sup>19</sup> S. 943.0583(2), F.S.

<sup>20</sup> S. 943.0583(4), F.S.

- A sworn statement attesting that the petitioner is eligible for an expunction to the best of his or her knowledge and does not have other petitions to expunge or seal pending before any court; and
- Official documentation of the petitioner's status as a human trafficking victim, if any exists.<sup>21</sup>

When a criminal history record is ordered to be expunged, the record must be physical destroyed by any criminal justice agency possessing such record, except that any criminal history record in the custody of the Florida Department of Law Enforcement (FDLE) must be retained.<sup>22</sup> A human trafficking victim may lawfully deny or fail to acknowledge any expunged record unless he or she is applying for a job with a criminal justice agency or is a defendant in a subsequent criminal prosecution.<sup>23</sup>

Current law also provides a public record exemption<sup>24</sup> for criminal intelligence<sup>25</sup> and criminal investigative information<sup>26</sup> including:<sup>27</sup>

- Any information that reveals the identity of a person under the age of 18 who is the victim of human trafficking for labor or services;<sup>28</sup>
- Any information that may reveal the identity of a person who is the victim of human trafficking for commercial sexual activity;<sup>29</sup> and
- A photograph, videotape, or image of any part of the body of a victim of human trafficking involving commercial sexual activity.<sup>30</sup>

### Vulnerable Victims and Witnesses

Florida currently provides several protections relating to the fair treatment of vulnerable victims and witnesses who are either underage or intellectually disabled, but does not currently provide similar protections for other vulnerable victims or witnesses.

Section 92.55, F.S., authorizes the court, or any party, parent, guardian, attorney, guardian ad litem,<sup>31</sup> or other appointed advocate, to motion for any order to protect the following persons from severe emotional or mental harm due to the presence of the defendant, if the victim or witness is required to testify in open court:<sup>32</sup>

- A victim or witness under the age of 18;
- A person with an intellectual disability; or
- A victim or witness who was under the age of 18 at the time he or she was a victim of or witness to a sexual offense.

For purposes of the protections provided under s. 92.55, F.S., "sexual offense" means any offense which qualifies a person as a sexual predator<sup>33</sup> or a sexual offender<sup>34</sup> which includes subjecting a person to specified types of human trafficking, including:

- Using coercion for commercial sexual activity of an adult;
- Using coercion for commercial sexual activity of an adult who is an unauthorized alien;
- For commercial sexual activity by the transferring or transporting a minor from outside this state to within the state; or

<sup>21</sup> S. 943.0583(6), F.S.

<sup>22</sup> Section 943.045(16), F.S.

<sup>23</sup> S. 943.0583(8)(b), F.S.

<sup>24</sup> S. 119.071(2)(h), F.S.

<sup>25</sup> The term "criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. S. 119.011(3)(a), F.S.

<sup>26</sup> The term "criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Section 119.011(3)(b), F.S.

<sup>27</sup> Ch. 2015-146 Laws of Fla.

<sup>28</sup> See s. 787.06(3)(a), F.S.

<sup>29</sup> See s. 787.06(3)(b), (d), (f), and (g), F.S.

<sup>30</sup> *Id.*

<sup>31</sup> S. 39.820(1), F.S.

<sup>32</sup> S. 92.55(2), F.S.

<sup>33</sup> S. 775.21(4)(a)1., F.S.

<sup>34</sup> S. 943.0435(1)(h)1., F.S.

- For commercial sexual activity in which any minor or any person who is mentally defective or mentally incapacitated is involved.<sup>35</sup>

When a victim or witness meets specified criteria, the court may enter an order:

- Limiting the number of times protected individuals may be interviewed;
- Prohibiting depositions of a victim or witness;
- Requiring the submission of questions before examination of a victim or witness;
- Setting the place and conditions for interviewing a victim or witness or for conducting any other proceeding; or
- Allowing or prohibiting any person's attendance at any proceeding.

The court may also order any other conditions it finds just and appropriate including the use of a therapy animal<sup>36</sup> or facility dog,<sup>37</sup> in any proceeding involving a sexual offense or child abuse, abandonment, or neglect.

### *Video Testimony*

Sections 92.53 and 92.54, F.S., authorize a court to enter a protective order after a motion and hearing in camera if the court finds that a victim or witness under 18 years of age or who has an intellectual disability is substantially likely to suffer at least moderate emotional or mental harm due to the presence of the defendant if required to testify in open court.

The court may order the testimony of such a victim or witness be videotaped and used in lieu of testimony in open court. However, the defendant and his or her counsel must be allowed to be present at any videotaping, but the court may order the defendant to view the testimony from outside the presence of the protected individual.<sup>38</sup> Alternatively, the court may require that the protected individual's testimony be taken outside the courtroom and shown in the courtroom by means of closed circuit television.<sup>39</sup> Only specified parties are allowed in the room where the testimony is recorded. A court may require a defendant to view the testimony from the courtroom, but must permit the defendant to observe and hear the person's testimony.<sup>40</sup>

### Privileged Communications

Section 90.5035, F.S., provides that communications between a sexual assault counselor or trained volunteer and a victim are confidential when not intended to be disclosed to a third party, other than persons:

- Present with the victim to assist in the consultation, examination, or interview;
- Necessary for the transmission of the communication; or
- Whom disclosure is reasonably necessary to accomplish the purpose for which the victim is consulting with the counselor or trained volunteer.
- "Sexual assault counselor" means any employee of a rape crisis center (center) whose primary purpose is to render advice, counseling, or assistance to sexual assault or sexual battery victims.
- "Trained volunteer" means a person who volunteers at a center, has completed 30 hours of training in assisting sexual violence victims/related topics, is supervised by center staff, and is included on a list of volunteers maintained by the center.
- "Victim" means a person who consults a sexual assault counselor or a trained volunteer for advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by an alleged, attempted, or completed sexual assault or sexual battery.

<sup>35</sup> S. 787.06(3)(b),(d),(f), or (g), F.S.

<sup>36</sup> "Therapy animal" means an animal that has been trained, evaluated, and certified as a therapy animal pursuant to industry standards by an organization that certifies animals as appropriate to provide animal therapy. S. 92.55(5)(b)2., F.S.

<sup>37</sup> "Facility dog" means a dog that has been trained, evaluated, and certified as a facility dog pursuant to industry standards and provides unobtrusive emotional support to children and adults in facility settings. S. 92.55(5)(b)1., F.S.

<sup>38</sup> S. 92.53(4), F.S.

<sup>39</sup> S. 92.54, F.S.

<sup>40</sup> S. 92.53(4), F.S.

A victim may refuse to disclose and prevent another person from disclosing a confidential communication made to a sexual assault counselor or trained volunteer or any record related to such communication, and such communication or record may only be disclosed with the victim's prior written consent. The privilege includes any advice given by the sexual assault counselor or trained volunteer in the course of that relationship, and the privilege may be claimed by the: Victim or his or her attorney; Victim's guardian or conservator; Personal representative of a deceased victim; Sexual assault counselor or trained volunteer, but only on behalf of the victim, and the authority to do so is presumed in the absence of evidence to the contrary.<sup>41, 42</sup>

### Victim's Right to Speedy Trial

Under s. 960.0015, F.S., a state attorney may file a demand for speedy trial in a felony or a misdemeanor case if the state has met its obligations under the rules of discovery, the court has granted at least three continuances requested by the defendant over the state attorney's objection, and:

- If the charge is a felony, the case is not resolved within 125 days after formal charges are filed and the defendant is arrested or a notice to appear in lieu of arrest is served on the defendant;<sup>43</sup> or
- If the charge is a misdemeanor, the case is not resolved within 45 days after formal charges are filed and the defendant is arrested or a notice to appear in lieu of arrest is served on the defendant.<sup>44</sup>

After the state files a demand for speedy trial, the court must schedule a calendar call within five days, at which time the trial must be scheduled to begin no sooner than five days or later than 45 days.<sup>45</sup> However, the court may postpone the trial date for up to 30 additional days if the defendant shows that a necessary witness who was properly served failed to attend a deposition and failed to attend a subsequently scheduled deposition following a court order to appear. In addition, the court may postpone the trial date for no fewer than 30 days but no more than 70 days if the court grants a motion by counsel to withdraw and the court appoints other counsel. The court may also grant whatever further extensions may be required to prevent deprivation of the defendant's right to due process.<sup>46</sup>

### **Effect of Proposed Changes**

#### Human Trafficking Victim Advocate-Victim Privilege

HB 523 creates a human trafficking victim advocate-victim privilege by mirroring the privilege provided for sexual assault counselors and domestic violence victim advocates. The bill provides that communication between a human trafficking victim advocate or trained volunteer and a human trafficking victim is confidential when such communication is not intended to be disclosed to a third party, other than a person:

- Present during the communication for the purpose of furthering the interest of the human trafficking victim;
- Necessary for the transmission of the communication; or
- To whom disclosure of the communication is reasonably necessary to accomplish the purpose of the human trafficking victim's communication.

The bill provides the following definitions relating to the human trafficking victim advocate-victim privilege:

- "Anti-human trafficking organization" means a registered agency that offers assistance to victims of human trafficking.

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<sup>41</sup> S. 92.55, F.S.

<sup>42</sup> S. 90.5036, F.S. provides a similar domestic violence advocate-victim privilege.

<sup>43</sup> S. 960.0015(1)(a), F.S.

<sup>44</sup> S. 960.0015(1)(b), F.S.

<sup>45</sup> S. 960.0015(2), F.S.

<sup>46</sup> S. 960.0015(3), F.S.

- "Human trafficking victim advocate" means an employee of an anti-human trafficking organization whose primary purpose is to provide advice, counseling, or services to human trafficking victims and who has completed at least 30 hours of human trafficking training. The required training must consist of 24 hours of human trafficking training delivered by the Office of the Attorney General, the Bureau of Criminal Justice Programs in the Division of Victim Services and Criminal Justice Programs, or the Florida Crime Prevention and Training Institute, and 6 hours of in-house organizational training.
- "Trained volunteer" means a person who volunteers with an anti-human trafficking organization and who has completed at least 30 hours of human trafficking training. The required training must consist of 24 hours of human trafficking training delivered by the Office of the Attorney General, the Bureau of Criminal Justice Programs in the Division of Victim Services and Criminal Justice Programs, or the Florida Crime Prevention and Training Institute, and 6 hours of in-house organizational training.
- "Human trafficking victim" means a person who consults a human trafficking victim advocate or trained volunteer seeking advice, counseling, or services related to an experience of human trafficking exploitation.

Under the bill, a human trafficking victim is authorized to refuse to disclose, and to prevent any other person from disclosing, a record created or confidential communication made during his or her communication with a human trafficking victim advocate or trained volunteer for the purpose of receiving advice, counseling, or other assistance. Such record or communication may be disclosed only with the human trafficking victim's prior written consent. The human trafficking victim advocate-privilege may be claimed by the:

- Human trafficking victim or the human trafficking victim's attorney on his or her behalf.
- Guardian or conservator of the human trafficking victim.
- Personal representative of a deceased human trafficking victim.
- Human trafficking victim advocate or trained volunteer, but only on behalf of the human trafficking victim.

#### Depositions in Human Trafficking Cases

The bill prohibits any depositions from being taken in a prosecution for any human trafficking offense, unless good cause is shown with consideration of the following factors:

- The consequences to the defendant.
- The complexity of the issues involved.
- The complexity of the witness testimony.
- The other opportunities available to the defendant to discover the information sought by deposition.

## Human Trafficking Victim Expunction

The bill clarifies that a human trafficking victim is authorized to seek expunction of multiple offenses committed while he or she was a victim of human trafficking and prohibits the clerk of court from charging any fees for a human trafficking victim's petition for expunction. The bill expands current human trafficking victim expunction limitations by allowing a victim to seek expunction for an arrest or filed charges for the following 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, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery; or
- Aggravated stalking.

A human trafficking victim is still prohibited from seeking expunction for any such offense if he or she was found guilty of, or plead guilty or no contest to, the offense. The bill also authorizes a human trafficking victim to seek expunction of his or her driving record for citations received while he or she was a victim of human trafficking.<sup>47</sup>

## Human Trafficking Offender Probation

The bill requires a person to comply with the requirements of sexual offender probation if he or she is convicted of subjecting a person to human trafficking:

- Using coercion for commercial sexual activity of an adult;
- Using coercion for commercial sexual activity of an adult who is an unauthorized alien;
- For commercial sexual activity by the transferring or transporting a minor from outside this state to within the state; or
- For commercial sexual activity in which any minor or any person who is mentally defective or mentally incapacitated is involved.

## Victim's Right to Speedy Trial

The bill amends the defendant's right to request an extension of the speedy trial timeframe by specifying that a defendant may make such a request upon showing a need to call a witness or alibi defenses. The bill also requires state attorneys to adopt a pro-prosecution policy for acts of human trafficking.

The bill provides an effective date of July 1, 2021.

## B. SECTION DIRECTORY:

**Section 1:** Creating s. 90.5037, F.S., relating to human trafficking victim advocate-victim privilege.

**Section 2:** Amending s. 787.06, F.S., relating to human trafficking.

**Section 3:** Amending s. 943.0583, F.S., relating to human trafficking victim expunction.

**Section 4:** Amending s. 948.30, F.S., relating to additional terms and conditions of probation or community control for certain sex offenses.

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<sup>47</sup> Current law does not provide a process for expunging a person's driving record.



**Section 5:** Amending s. 960.0015, F.S., relating to victim's right to a speedy trial; speedy trial demand by the state attorney.

**Section 6:** Providing an effective date of July 1, 2021.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a fiscal impact on the Department of Corrections, by requiring a person convicted of human trafficking to complete sex offender probation, which may require a more intensive form of supervision than required under current law.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative fiscal impact on the clerks of court by requiring petitions for expunction by a human trafficking victim to be processed without charge.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### 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 government.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

Not applicable.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

