

House Bill 200

By: Representatives Lindsey of the 54th, Golick of the 34th, Houston of the 170th, Oliver of the 83rd, Willard of the 49th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 16, 17, and 35 of the Official Code of Georgia Annotated, relating to crimes
2 and offenses, criminal procedure, and law enforcement, respectively, so as to discourage
3 trafficking of persons for labor or sexual servitude and provide greater protections to persons
4 subject to such crimes; to increase the penalties for trafficking of persons for labor or sexual
5 servitude; to change provisions relating to trafficking of persons for labor or sexual servitude;
6 to provide that certain facts or circumstances shall not constitute a defense to the crime of
7 trafficking of persons for labor or sexual servitude; to increase penalties for the crimes of
8 keeping a place of prostitution, pimping, and pandering when the crimes involve certain
9 youth; to provide for definitions; to provide for an affirmative defense to certain sexual
10 crimes under certain circumstances; to change provisions relating to justification and
11 affirmative defenses; to change provisions relating to compensation from the Georgia Crime
12 Victims Compensation Board; to provide for notification of federal assistance for certain
13 persons under the Crime Victims' Bill of Rights; to provide for training for law enforcement
14 investigating crimes involving trafficking persons for labor or sexual servitude; to provide
15 for related matters; to repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offense, is
19 amended by revising Code Section 16-5-46, relating to trafficking of persons for labor or
20 sexual servitude, as follows:

21 "16-5-46.

22 (a) As used in this Code section, the term:

23 (1) 'Coercion' means:

24 (A) Causing or threatening to cause bodily harm to any person, physically restraining
25 or confining any person, or threatening to physically restrain or confine any person;

26 (B) Exposing or threatening to expose any fact or information or disseminating or
 27 threatening to disseminate any fact or information that if revealed would tend to subject
 28 a person to criminal or immigration proceedings, hatred, contempt, or ridicule;

29 (C) Destroying, concealing, removing, confiscating, or possessing any actual or
 30 purported passport or other immigration document, or any other actual or purported
 31 government identification document, of any person; ~~or~~

32 (D) Providing a controlled substance, as such term is defined by Code Section
 33 16-13-21, to such person; or

34 (E) Causing or threatening to cause financial harm to any person or using financial
 35 control over any person.

36 (2) 'Deception' means:

37 (A) Creating or confirming another's impression of an existing fact or past event which
 38 is false and which the accused knows or believes to be false;

39 (B) Maintaining the status or condition of a person arising from a pledge by that person
 40 of his or her personal services as security for a debt, if the value of those services as
 41 reasonably assessed is not applied toward the liquidation of the debt or the length and
 42 nature of those services are not respectively limited and defined, or preventing a person
 43 from acquiring information pertinent to the disposition of such debt; or

44 (C) Promising benefits or the performance of services which the accused does not
 45 intend to deliver or perform or knows will not be delivered or performed. Evidence of
 46 failure to deliver benefits or perform services standing alone shall not be sufficient to
 47 authorize a conviction under this Code section.

48 (3) 'Labor servitude' means work or service of economic or financial value which is
 49 performed or provided by another person and is induced or obtained by coercion or
 50 deception.

51 (4) 'Performance' shall have the same meaning as set forth in Code Section 16-12-100.

52 (5) 'Sexually explicit conduct' shall have the same meaning as set forth in Code Section
 53 16-12-100.

54 ~~(4)~~(6) 'Sexual servitude' means:

55 (A) Any sexually explicit conduct as defined in paragraph (4) of subsection (a) of Code
 56 ~~Section 16-12-100~~ or performance involving sexually explicit conduct for which
 57 anything of value is directly or indirectly given, promised to, or received by any person,
 58 which conduct is induced or obtained by coercion or deception or which conduct is
 59 induced or obtained from a person under the age of 18 years; or

60 (B) Any sexually explicit conduct as defined in paragraph (4) of subsection (a) of Code
 61 ~~Section 16-12-100~~ or performance involving sexually explicit conduct which is
 62 performed or provided by any person, which conduct is induced or obtained by

63 coercion or deception or which conduct is induced or obtained from a person under the
64 age of 18 years.

65 (b) A person commits the offense of trafficking a person for labor servitude when that
66 person knowingly subjects another person to or maintains another person in labor servitude
67 or knowingly recruits, entices, harbors, transports, provides, or obtains by any means
68 another person for the purpose of labor servitude.

69 (c) A person commits the offense of trafficking a person for sexual servitude when that
70 person knowingly subjects another person to or maintains another person in sexual
71 servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any
72 means another person for the purpose of sexual servitude.

73 (d) The following facts or conditions shall not constitute a defense in a prosecution for
74 violations of subsection (b) or (c) of this Code section:

75 (1) The sexual history or history of commercial sexual activity of a person alleged to
76 have been trafficked;

77 (2) A person alleged to have been trafficked has a connection by blood or marriage to
78 a defendant in the case or to anyone involved in such person's trafficking;

79 (3) The age of consent for sexual activity; or

80 (4) The defendant's lack of knowledge of the age of the person being trafficked.

81 ~~(d)~~(e) Any person who commits the offense of trafficking a person for labor or sexual
82 servitude shall be guilty of a felony, and upon conviction thereof, shall be punished by
83 imprisonment for not less than ~~one ten~~ nor more than 20 years, a fine not to exceed
84 \$100,000.00, or both. Any person who commits the offense of trafficking a person for
85 labor or sexual servitude against a person who is under the age of 18 years shall be guilty
86 of a felony, and upon conviction thereof, shall be punished by imprisonment for not less
87 than ~~ten~~ 25 nor more than ~~20~~ 50 years or life imprisonment, a fine not to exceed
88 \$100,000.00, or both.

89 (f) All real and personal property of every kind used or intended for use in the course of,
90 derived from, or realized through a violation of this Code section shall be subject to
91 forfeiture to the state. Forfeiture shall be had by the same procedure set forth in Code
92 Section 16-14-7. Prosecuting attorneys and the Attorney General may commence
93 forfeiture proceedings under this Code section.

94 ~~(e)~~(g) Prosecuting attorneys and the Attorney General shall have concurrent authority to
95 prosecute any criminal cases arising under the provisions of this Code section and to
96 perform any duty that necessarily appertains thereto.

97 ~~(f)~~(h) Each violation of this Code section shall constitute a separate offense and shall not
98 merge with any other offense.

99 ~~(g)~~(i) A corporation may be prosecuted under this Code section for an act or omission
 100 constituting a crime under this Code section only if an agent of the corporation performs
 101 the conduct which is an element of the crime while acting within the scope of his or her
 102 office or employment and on behalf of the corporation and the commission of the crime
 103 was either authorized, requested, commanded, performed, or within the scope of his or her
 104 employment on behalf of the corporation or constituted a pattern of illegal activity that an
 105 agent of the company knew or should have known was occurring."

106 **SECTION 2.**

107 Said title is further amended by revising subsections (a) and (b) of Code Section 16-6-13,
 108 relating to the penalties for violating Code Sections 16-6-9 through 16-6-12, as follows:

109 "(a) Except as otherwise provided in subsection (b) of this Code section, a person
 110 convicted of any of the offenses enumerated in Code Sections 16-6-10 through 16-6-12
 111 shall be punished as for a misdemeanor of a high and aggravated nature. A person
 112 convicted of the offense enumerated in Code Section 16-6-9 shall be punished as for a
 113 misdemeanor.

114 (b)(1) A person convicted of ~~keeping a place of prostitution, pimping, or pandering~~ any
 115 of the offenses enumerated in Code Sections 16-6-10 through 16-6-12 when such offense
 116 involves ~~keeping a place of prostitution for, the pimping for, or the solicitation of a~~
 117 ~~person under the age of~~ who is at least 16 but less than 18 years of age to perform an act
 118 of prostitution or the assembly of two or more persons ~~under the age of 18 years~~ aged 16
 119 or 17 at a fixed place for the purpose of being solicited by others to perform an act of
 120 prostitution shall be guilty of a felony and shall be punished by imprisonment for a period
 121 of not less than five nor more than 20 years and ~~such convicted person shall be fined a~~
 122 fine of not less than \$2,500.00 nor more than \$10,000.00.

123 (2) A person convicted of any of the offenses enumerated in Code Sections 16-6-10
 124 through 16-6-12 when such offense involves a person under the age of 16 years to
 125 perform an act of prostitution or the assembly of two or more persons under the age of
 126 16 years at a fixed place for the purpose of being solicited by others to perform an act of
 127 prostitution shall be guilty of a felony and shall be punished by imprisonment for a period
 128 of not less than ten nor more than 30 years and a fine of not more than \$100,000.00.

129 (3) Adjudication of guilt or imposition of a sentence for a conviction of a second or
 130 subsequent offense ~~when such offense involves keeping a place of prostitution for, the~~
 131 ~~pimping for, or pandering of a person under the age of 18 years~~ pursuant to this
 132 subsection, including a plea of nolo contendere, shall not be suspended, probated,
 133 deferred, or withheld."

134 **SECTION 3.**

135 Said title is further amended by revising paragraph (1) of Code Section 16-3-20, relating to
136 the defense of justification, as follows:

137 "(1) When the person's conduct is justified under Code Section 16-3-21, 16-3-23,
138 16-3-24, 16-3-25, ~~or~~ 16-3-26, or 16-3-26.1;"

139 **SECTION 4.**

140 Said title is further amended by adding a new Code section, to read as follows:

141 "16-3-26.1

142 (a) As used in this Code section, the term 'sexual crime' means prostitution, sodomy,
143 solicitation of sodomy, or masturbation for hire as such offenses are proscribed in
144 Chapter 6 of Title 16.

145 (b) A person shall not be guilty of a sexual crime if the conduct upon which the alleged
146 criminal liability is based was committed while the accused was being trafficked for
147 sexual servitude in violation of subsection (c) of Code Section 16-5-46."

148 **SECTION 5.**

149 Said title is further amended by revising Code Section 16-3-28, relating to affirmative
150 defenses, as follows:

151 "16-3-28.

152 A defense based upon any of the provisions of this article ~~is~~ shall be an affirmative
153 defense."

154 **SECTION 6.**

155 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
156 amended by revising paragraphs (3) and (9) of Code Section 17-15-2, relating to definitions
157 for victim compensation, as follows:

158 "(3) 'Crime' means:

159 (A) An act which constitutes hit and run as defined in Code Section 40-6-270,
160 homicide by vehicle as defined in Code Section 40-6-393, serious injury by vehicle as
161 defined in Code Section 40-6-394, or any act which constitutes a violation of Code
162 Section 16-5-46 or Chapter 6 or Part 2 of Article 3 of Chapter 12 of Title 16, a violation
163 of Code Section 16-5-70, or a violent crime as defined by state or federal law which
164 results in physical injury, serious mental or emotional trauma, or death to the victim and
165 which is committed:

166 (i) In this state;

- 167 (ii) In a state which does not have a victims' compensation program, if the victim is
 168 a resident of this state; or
- 169 (iii) In a state which has compensated the victim in an amount less than the victim
 170 would be entitled to pursuant to this chapter, if the victim is a resident of this state;
- 171 (B) An act which constitutes international terrorism as defined in 18 U.S.C. Section
 172 2331 which results in physical injury, serious mental or emotional trauma, or death to
 173 the victim, if the victim is a resident of this state and is outside the territorial boundaries
 174 of the United States when such act is committed; or
- 175 (C) An act of mass violence which results in physical injury, serious mental or
 176 emotional trauma, or death to the victim, if the victim is a resident of this state and is
 177 outside the territorial boundaries of the United States when such act is committed."
- 178 "(9) 'Victim' means a person who:
- 179 (A) Is injured physically, who dies, or who suffers financial hardship as a result of
 180 being injured physically as a direct result of a crime;
- 181 (B) Suffers a serious mental or emotional trauma as a result of being threatened with
 182 a crime which could result in physical injury or death; ~~or~~
- 183 (C) Suffers a serious mental or emotional trauma as a result of being present during the
 184 commission of a crime; or
- 185 (D) Suffers a serious mental or emotional trauma as a result of being trafficked for
 186 labor or sexual servitude as defined in Code Section 16-5-46."

187 **SECTION 7.**

188 Said title is further amended by revising subsection (e) of Code Section 17-15-7, relating to
 189 persons eligible for awards, as follows:

190 "(e) A person who is criminally responsible for the crime upon which a claim is based or
 191 is an accomplice of such person shall not be eligible to receive an award with respect to
 192 such claim; provided, however, that such ineligibility shall not apply if the claimant is a
 193 victim as defined in subparagraph (D) of paragraph (9) of Code Section 17-15-2."

194 **SECTION 8.**

195 Said title is further amended by revising subsection (a) of Code Section 17-15-8, relating to
 196 required findings and the amount of the award, as follows:

197 "(a) No award may be made unless the board or director finds that:

- 198 (1) A crime was committed;
- 199 (2) The crime directly resulted in the victim's physical injury, serious mental or
 200 emotional trauma, or financial hardship as a result of the victim's physical injury, serious
 201 mental or emotional trauma, or the victim's death;

202 (3) Police records, records of an investigating agency, or records created pursuant to a
 203 mandatory reporting requirement show that the crime was promptly reported to the proper
 204 authorities. In no case may an award be made where the police records, records of an
 205 investigating agency, or records created pursuant to a mandatory reporting requirement
 206 show that such report was made more than 72 hours after the occurrence of such crime
 207 unless the board, for good cause shown, finds the delay to have been justified and
 208 provided, further, that good cause shall be presumed if the claimant is a victim as defined
 209 in subparagraph (D) of paragraph (9) of Code Section 17-15-2; and
 210 (4) The applicant has pursued restitution rights against any person who committed the
 211 crime unless the board or director determines that such action would not be feasible.
 212 The board, upon finding that any claimant or award recipient has not fully cooperated with
 213 all law enforcement agencies, may deny, reduce, or withdraw any award."

214 SECTION 9.

215 Said title is further amended by revising subsection (a) of Code Section 17-17-6, relating to
 216 notification to victim of accused's pretrial release and of victims' rights and the availability
 217 of victims' compensation and services, as follows:

218 "(a) Upon initial contact with a victim, all law enforcement and court personnel shall make
 219 available to the victim the following information written in plain language:

220 (1) The possibility of pretrial release of the accused, the victim's rights and role in the
 221 stages of the criminal justice process, and the means by which additional information
 222 about these stages can be obtained;

223 (2) The availability of victim compensation and, if the victim has been trafficked for
 224 labor or sexual servitude as defined in Code Section 16-5-46, compensation available
 225 through the federal government pursuant to 22 U.S.C. Section 7105; and

226 (3) The availability of community based victim service programs."

227 SECTION 10.

228 Title 35 of the Official Code of Georgia Annotated, relating to law enforcement, is amended
 229 by adding a new Code section to Chapter 1, relating to general provisions for law
 230 enforcement officers and agencies, to read as follows:

231 "35-1-16.

232 (a) The Georgia Peace Officer Standards and Training Council and the Georgia Public
 233 Safety Training Center shall establish guidelines and procedures for the incorporation of
 234 training materials and information in:

235 (1) Methods for identifying, combating, and reporting incidents where a person has been
236 trafficked for labor or sexual servitude, as such terms are defined in Code Section
237 16-5-46;

238 (2) Methods for providing proper detention facilities or alternatives to detention facilities
239 for persons who have been trafficked for labor or sexual servitude, as such terms are
240 defined in Code Section 16-5-46, including providing information on therapeutic
241 facilities for such persons; and

242 (3) Methods for assisting persons who have been trafficked for labor or sexual servitude,
243 as such terms are defined in Code Section 16-5-46, including providing information on
244 social service organizations available to assist such person.

245 (b) The guidelines and procedures listed in subsection (a) of this Code section shall be for
246 use by law enforcement training centers monitored by the Georgia Peace Officer Standards
247 and Training Council and monitored and funded by the Georgia Public Safety Training
248 Center in all courses for which they have responsibility and oversight."

249 **SECTION 11.**

250 All laws and parts of laws in conflict with this Act are repealed.