House Bill 200 (AS PASSED HOUSE AND SENATE)
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

To amend Titles 16, 17, and 35 of the Official Code of Georgia Annotated, relating to crimes and offenses, criminal procedure, and law enforcement, respectively, so as to discourage trafficking of persons for labor or sexual servitude and provide greater protections to persons subject to such crimes; to increase the penalties for trafficking of persons for labor or sexual servitude; to change provisions relating to trafficking of persons for labor or sexual servitude; to provide that certain facts or circumstances shall not constitute a defense to the crime of trafficking of persons for labor or sexual servitude; to increase penalties for the crimes of keeping a place of prostitution, pimping, and pandering when the crimes involve certain youth; to provide for definitions; to provide for an affirmative defense to certain sexual crimes under certain circumstances; to change provisions relating to compensation from the Georgia Crime Victims Compensation Board; to provide for notification of federal assistance for certain persons under the Crime Victims' Bill of Rights; to provide for training for law enforcement investigating crimes involving trafficking persons for labor or sexual servitude; to provide that the Georgia Bureau of Investigation shall have the duty to investigate violations of Code Section 16-5-46 and shall have subpoena power under certain circumstances; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"16-5-46.

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

(1) 'Coercion' means:
(A) Causing or threatening to cause bodily harm to any person, physically restraining or confining any person, or threatening to physically restrain or confine any person;
(B) Exposing or threatening to expose any fact or information or disseminating or threatening to disseminate any fact or information that if revealed would tend to subject a person to criminal or immigration proceedings, hatred, contempt, or ridicule;
(C) Destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of any person; or
(D) Providing a controlled substance, as such term is defined by Code Section 16-13-21, to such person for the purpose of compelling such person to engage in labor or sexual servitude against his or her will; or
(E) Causing or threatening to cause financial harm to any person or using financial control over any person.

(2) 'Deception' means:
(A) Creating or confirming another's impression of an existing fact or past event which is false and which the accused knows or believes to be false;
(B) Maintaining the status or condition of a person arising from a pledge by that person of his or her personal services as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined, or preventing a person from acquiring information pertinent to the disposition of such debt; or
(C) Promising benefits or the performance of services which the accused does not intend to deliver or perform or knows will not be delivered or performed. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this Code section.

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

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

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

(6) 'Sexual servitude' means:
(A) Any sexually explicit conduct as defined in paragraph (4) of subsection (a) of Code Section 16-12-100 or performance involving sexually explicit conduct for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years; or
(B) Any sexually explicit conduct as defined in paragraph (4) of subsection (a) of Code Section 16-12-100 or performance involving sexually explicit conduct which is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years.

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

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

(d) The age of consent for sexual activity or the accused's lack of knowledge of the age of the person being trafficked shall not constitute a defense in a prosecution for a violation of this Code section.

(e) The sexual history or history of commercial sexual activity of a person alleged to have been trafficked or such person's connection by blood or marriage to an accused in the case or to anyone involved in such person's trafficking shall be excluded from evidence if the court finds at a hearing outside the presence of the jury that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.

(f)(1) Except as provided in paragraph (2) of this subsection any accused who commits the offense of trafficking a person for labor or sexual servitude shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than one ten nor more than 20 years, a fine not to exceed $100,000.00, or both.

(2) Any person accused who commits the offense of trafficking a person for labor or sexual servitude against a person who is under the age of 18 years shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than ten nor more than 20 years, a fine not to exceed $100,000.00, or both; provided, however, that if the offense is committed against a person under 18 years of age and such person under the age of 18 years was coerced or deceived into being trafficked for labor or sexual servitude, the accused shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than 25 nor more than 50 years or life imprisonment, a fine not to exceed $100,000.00, or both.

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

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

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

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

SECTION 2.

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

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

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

(2) A person convicted of any of the offenses enumerated in Code Sections 16-6-10
through 16-6-12 when such offense involves the conduct of a person under the age of 16
years shall be guilty of a felony and shall be punished by imprisonment for a period of
not less than ten nor more than 30 years, a fine of not more than $100,000.00, or both.
(3) Adjudication of guilt or imposition of a sentence for a conviction of a second or subsequent offense when such offense involves keeping a place of prostitution for, the pimping for, or pandering of a person under the age of 18 years pursuant to this subsection, including a plea of nolo contendere, shall not be suspended, probated, deferred, or withheld.

SECTION 3.

Said title is further amended by adding a new Code section to Article 1 of Chapter 3, relating to responsibility as a defense to criminal prosecutions, to read as follows:

"16-3-6.

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

(1) 'Coercion' shall have the same meaning as set forth in Code Section 16-5-46.
(2) 'Deception' shall have the same meaning as set forth in Code Section 16-5-46.
(3) 'Sexual crime' means prostitution, sodomy, solicitation of sodomy, or masturbation for hire as such offenses are proscribed in Chapter 6 of Title 16.
(4) 'Sexual servitude' shall have the same meaning as set forth in Code Section 16-5-46.

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

(c) A defense based upon any of the provisions of this Code section shall be an affirmative defense."

SECTION 4.

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

"(3) 'Crime' means:

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

(i) In this state;
(ii) In a state which does not have a victims' compensation program, if the victim is a resident of this state; or

(iii) In a state which has compensated the victim in an amount less than the victim would be entitled to pursuant to this chapter, if the victim is a resident of this state; or

(B) An act which constitutes international terrorism as defined in 18 U.S.C. Section 2331 which results in physical injury, serious mental or emotional trauma, or death to the victim, if the victim is a resident of this state and is outside the territorial boundaries of the United States when such act is committed; or

(C) An act of mass violence which results in physical injury, serious mental or emotional trauma, or death to the victim, if the victim is a resident of this state and is outside the territorial boundaries of the United States when such act is committed.

(9) ‘Victim’ means a person who:

(A) Is injured physically, who dies, or who suffers financial hardship as a result of being injured physically as a direct result of a crime;

(B) Suffers a serious mental or emotional trauma as a result of being threatened with a crime which could result in physical injury or death; or

(C) Suffers a serious mental or emotional trauma as a result of being present during the commission of a crime; or

(D) Suffers a serious mental or emotional trauma as a result of being trafficked for labor or sexual servitude as defined in Code Section 16-5-46.

SECTION 5.

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

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

SECTION 6.

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

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

(1) A crime was committed;

(2) The crime directly resulted in the victim's physical injury, serious mental or emotional trauma, or financial hardship as a result of the victim's physical injury, serious mental or emotional trauma, or the victim's death;

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(3) Police records, records of an investigating agency, or records created pursuant to a mandatory reporting requirement show that the crime was promptly reported to the proper authorities. In no case may an award be made where the police records, records of an investigating agency, or records created pursuant to a mandatory reporting requirement show that such report was made more than 72 hours after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified and provided, further, that good cause shall be presumed if the claimant is a victim as defined in subparagraph (D) of paragraph (9) of Code Section 17-15-2; and

(4) The applicant has pursued restitution rights against any person who committed the crime unless the board or director determines that such action would not be feasible.
The board, upon finding that any claimant or award recipient has not fully cooperated with all law enforcement agencies, may deny, reduce, or withdraw any award."

SECTION 7.

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

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

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

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

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

SECTION 8.

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

"35-1-16.

(a) The Georgia Peace Officer Standards and Training Council and the Georgia Public Safety Training Center shall establish guidelines and procedures for the incorporation of training materials and information in:
(1) Methods for identifying, combating, and reporting incidents where a person has been trafficked for labor or sexual servitude, as such terms are defined in Code Section 16-5-46;

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

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

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

SECTION 9.

Said title is further amended by revising subsection (a) of Code Section 35-3-4, relating to powers and duties of the Georgia Bureau of Investigation, by striking "or" at the end of paragraph (11), striking the period at the end of paragraph (12) and inserting "; or" in lieu thereof, and adding a new paragraph to read as follows:

"(13) Identify and investigate violations of Code Section 16-5-46."

SECTION 10.

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

"35-3-4.3.

(a) In any investigation of a violation of Code Section 16-5-46 involving trafficking of persons for labor or sexual servitude, the director, assistant director, or deputy director for investigations shall be authorized to issue a subpoena, with the consent of the Attorney General, to compel the production of books, papers, documents, or other tangible things, including records and documents contained within, or generated by, a computer or any other electronic device.

(b) Upon the failure of a person without lawful excuse to obey a subpoena, the director, assistant director, or the deputy director for investigations, through the Attorney General or district attorney, may apply to a superior court having jurisdiction for an order compelling compliance. Such person may object to the subpoena on grounds that it fails to comply with this Code section or upon any constitutional or other legal right or privilege of such person. The court may issue an order modifying or setting aside such subpoena or..."
directing compliance with the original subpoena. Failure to obey a subpoena issued under this Code section may be punished by the court as contempt of court."

SECTION 11.

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