

House Bill 1078

By: Representatives Neal of the 1st and Purcell of the 159th

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 4 of Article 1 of Chapter 11 of Title 15 of the Official Code of Georgia
2 Annotated, relating to commencement and conduct of juvenile proceedings in courts, so as
3 to provide for the modification of orders of delinquency for children who are victims of
4 sexual abuse or sexual trafficking; to amend Part 8 of Article 1 of Chapter 11 of Title 15 of
5 the Official Code of Georgia Annotated, relating to access to juvenile court records and
6 hearings, so as to provide for the sealing of court records for children who are victims of
7 sexual abuse or sexual trafficking; to provide for related matters; to repeal conflicting laws;
8 and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 SECTION 1.

11 Part 4 of Article 1 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated,
12 relating to commencement and conduct of juvenile proceedings in courts, is amended in
13 Code Section 15-11-40, relating to modification or vacation of orders, revocation of
14 probation, petition, and hearing and notice, as follows:

15 "15-11-40.

16 (a) An order of the court shall be set aside if:

- 17 (1) It appears that it was obtained by fraud or mistake sufficient therefor in a civil action;
- 18 (2) The court lacked jurisdiction over a necessary party or of the subject matter; or
- 19 (3) Newly discovered evidence so requires.

20 (b) An order of the court may also be changed, modified, or vacated on the ground that
21 changed circumstances so require in the best interest of the child, except an order
22 committing a delinquent child to the Department of Juvenile Justice, after the child has
23 been transferred to the physical custody of the Department of Juvenile Justice, or an order
24 of dismissal. An order granting probation to a child found to be delinquent or unruly may
25 be revoked on the ground that the conditions of probation have not been observed.

26 (c) An order of adjudication of delinquency by a court may also be modified or vacated
 27 if the child was adjudicated delinquent for a sexual crime as such term is defined by Code
 28 Section 16-3-6 and such crime resulted from the child being:

29 (1) Trafficked for sexual servitude in violation of Code Section 16-5-46; or

30 (2) A victim of sexual exploitation as such term is defined by Code Section 49-5-40.

31 (d) Any party to the proceeding, the probation officer, or any other person having
 32 supervision or legal custody of or an interest in the child may petition the court for the
 33 relief provided in this Code section. The petition shall set forth in clear and concise
 34 language the grounds upon which the relief is requested.

35 ~~(d)~~(e) After the petition is filed, the court shall fix a time for hearing and shall cause notice
 36 to be served, as a summons is served under Code Section 15-11-39.1, on the parties to the
 37 proceeding or those affected by the relief sought. After the hearing, which may be
 38 informal, the court shall deny or grant relief as the evidence warrants."

39 **SECTION 2.**

40 Part 8 of Article 1 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated,
 41 relating to access to juvenile court records and hearings, is amended in Code Section
 42 15-11-79.2, relating to sealing of records, grounds, notice and hearing, effect of order, and
 43 limitation on issuing orders, as follows:

44 "15-11-79.2.

45 (a) Upon dismissal of a petition or complaint alleging delinquency or unruliness, or, in a
 46 case handled through informal adjustment, following completion of the informal
 47 adjustment, the court shall order the sealing of the files and records in the case, including
 48 those specified in Code Sections 15-11-82 and 15-11-83.

49 (b) On application of a person who has been adjudicated delinquent or unruly or on the
 50 court's own motion, and after a hearing, the court shall order the sealing of the files and
 51 records in the proceeding, including those specified in Code Sections 15-11-82 and
 52 15-11-83, if the court finds that:

53 (1) Two years have elapsed since the final discharge of the person;

54 (2) Since the final discharge of the person he or she has not been convicted of a felony
 55 or of a misdemeanor involving moral turpitude or adjudicated a delinquent or unruly
 56 child and no proceeding is pending against the person seeking conviction or adjudication;
 57 and

58 (3) The person has been rehabilitated.

59 (c) On application of a person who has been adjudicated delinquent or on the court's own
 60 motion, and after a hearing, the court shall order the sealing of the files and records in the
 61 proceeding, including those specified in Code Sections 15-11-82 and 15-11-83, if the court

62 finds that the child was adjudicated delinquent for a sexual crime as such term is defined
 63 by Code Section 16-3-6 and such crime resulted from the child being:

64 (1) Trafficked for sexual servitude in violation of Code Section 16-5-46; or

65 (2) A victim of sexual exploitation as such term is defined by Code Section 49-5-40.

66 (d) Reasonable notice of the hearing required by subsection (b) of this Code section shall
 67 be given to:

68 (1) The district attorney;

69 (2) The authority granting the discharge if the final discharge was from an institution or
 70 from parole; and

71 (3) The law enforcement officers or department having custody of the files and records
 72 if the files and records specified in Code Sections 15-11-82 and 15-11-83 are included
 73 in the application or motion.

74 ~~(d)~~(e) Upon the entry of the order the proceeding shall be treated as if it had never
 75 occurred. All index references shall be deleted and the person, the court, the law
 76 enforcement officers, and the departments shall properly reply that no record exists with
 77 respect to the person upon inquiry in any matter. Copies of the order shall be sent to each
 78 agency or official therein named and shall also be sent to the deputy director of the Georgia
 79 Crime Information Center. Inspection of the sealed files and records thereafter may be
 80 permitted by an order of the court upon petition by the person who is the subject of the
 81 records and only by those persons named in the order or to criminal justice officials upon
 82 petition to the court for official judicial enforcement or criminal justice purposes.

83 ~~(e)~~(f) The court may seal any record containing information identifying a victim of an act
 84 which, if done by an adult, would constitute a sexual offense under Chapter 6 of Title 16."

85 **SECTION 3.**

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