

Senate Bill 233

By: Senators Crane of the 28th, Unterman of the 45th, McKoon of the 29th and Harper of the 7th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 21 of Title 15 and Code Section 16-3-6 of the Official Code of Georgia
2 Annotated, relating to payment and distribution of fines and forfeitures and affirmative
3 defense to certain sexual crimes, respectively, so as to make provisions for children who have
4 been sexually exploited; to provide for legislative findings; to create the Safe Harbor for
5 Sexually Exploited Children Fund and the Safe Harbor for Sexually Exploited Children Fund
6 Commission; to provide for definitions; to provide for appointment of members of the
7 commission and personnel; to provide for duties of the commission and allow for expenses;
8 to provide for recommendations of changes in state programs, statutes, and policies; to
9 provide for acceptance of federal funds and individual donations; to provide for fines and
10 penalties; to provide for collection of fines and disposition of moneys collected; to provide
11 for a duty to collect; to change provisions relating to affirmative defenses for certain sexual
12 crimes; to provide for related matters; to provide for an effective date and contingent
13 effective date; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 style="text-align:center">**SECTION 1.**

16 The General Assembly finds that arresting, prosecuting, and incarcerating victimized
17 children serves to retraumatize children and to increase their feelings of low self-esteem,
18 which only makes the process of recovery more difficult. Both federal and state laws
19 recognize that sexually exploited children are the victims of crime and should be treated as
20 such. Therefore, the General Assembly finds that sexually exploited children should not be
21 prosecuted for criminal acts related to prostitution, but should, when possible, be diverted
22 into services that address the needs of these children outside of the justice system. Sexually
23 exploited children deserve the protection of child welfare services, including family support,
24 crisis intervention, counseling, and emergency housing services. The purpose of this Act is
25 to protect a child from further victimization after the child is discovered to be a sexually
26 exploited child by ensuring that a child protective response is in place in this state. This can

27 be accomplished by presuming that any child engaged in prostitution, masturbation for hire,
 28 or pandering is a victim of sex trafficking and providing these children with the appropriate
 29 care and services when possible.

30 **SECTION 2.**

31 Chapter 21 of Title 15 of the Official Code of Georgia Annotated, relating to payment and
 32 disposition of fines and forfeitures, is amended by adding a new article to read as follows:

33 "ARTICLE 11

34 15-21-200.

35 This article is enacted pursuant to Article III, Section IX, Paragraph VI(o) of the
 36 Constitution, which provision authorizes additional penalty assessments for violations
 37 relating to certain sexual crimes and provides that the proceeds derived therefrom may be
 38 used for the purpose of meeting the costs of care and rehabilitative services for certain
 39 citizens of this state who have been sexually exploited.

40 15-21-201.

41 As used in this article, the term:

42 (1) 'Commission' means the Safe Harbor for Sexually Exploited Children Fund
 43 Commission created in Code Section 15-21-202.

44 (2) 'Fund' means the Safe Harbor for Sexually Exploited Children Fund created by Code
 45 Section 15-21-208.

46 (3) 'Safe house' means a licensed residential facility approved by the commission to
 47 provide shelter for sexually exploited children.

48 (4) 'Sexually exploited child' means a person who is younger than 18 years of age who:

49 (A) Has been the victim of trafficking of persons for sexual servitude in violation of
 50 Code Section 16-5-46;

51 (B) Engaged in prostitution, masturbation for hire, solicitation of prostitution, or
 52 masturbation for hire; or

53 (C) Has been the victim of child sex trafficking by force, fraud, or coercion under 18
 54 U.S.C. Section 1591.

55 15-21-202.

56 There is established the Safe Harbor for Sexually Exploited Children Fund Commission
 57 which is assigned to the Governor's Office for Children and Families for administrative
 58 purposes only, as prescribed in Code Section 50-4-3.

59 15-21-203.

60 (a) The commission shall consist of eight members who shall serve for terms of two years,
 61 except that with respect to the first members appointed, two members shall be appointed
 62 for terms of three years, four for terms of two years, and two for terms of one year. The
 63 Governor's Office for Children and Families, Criminal Justice Coordinating Council,
 64 Department of Human Services, and Department of Public Health shall each appoint one
 65 member of the commission; and the remaining four members shall be appointed by the
 66 Governor. The Governor shall establish initial terms of office for all members of the
 67 commission within the limitations of this subsection.

68 (b) In the event of death, resignation, disqualification, or removal for any reason of any
 69 member of the commission, the vacancy shall be filled in the same manner as the original
 70 appointment, and the successor shall serve for the unexpired term.

71 (c) Membership on the commission shall not constitute public office, and no member shall
 72 be disqualified from holding public office by reason of his or her membership.

73 (d) The Governor shall designate a chairperson of the commission from among the
 74 members, which chairperson shall serve in that position at the pleasure of the Governor.
 75 The commission may elect such other officers and committees as it considers appropriate.

76 (e) The commission, with the approval of the Governor, may employ such professional,
 77 technical, or clerical personnel as deemed necessary to carry out the purposes of this
 78 article.

79 15-21-204.

80 Members of the commission shall serve without compensation but shall receive the same
 81 expense allowance per day as that received by a member of the General Assembly for each
 82 day such member of the commission is in attendance at a meeting of such commission, plus
 83 either reimbursement for actual transportation costs while traveling by public carrier or the
 84 same mileage allowance for use of a personal car in connection with such attendance as
 85 members of the General Assembly receive. Such expense and travel allowance shall be
 86 paid in lieu of any per diem, allowance, or other remuneration now received by any such
 87 member for such attendance. Expense allowances and other costs authorized in this Code
 88 section shall be paid from moneys in the fund.

89 15-21-205.

90 (a) The commission shall:

91 (1) Meet at such times and places as it shall determine necessary or convenient to
 92 perform its duties. The commission shall also meet on the call of the chairperson or the
 93 Governor;

94 (2) Maintain minutes of its meetings;

95 (3) Adopt rules and regulations for the transaction of its business;

96 (4) Accept applications for disbursements of available money from the fund;

97 (5) Develop a state-wide protocol for helping to coordinate the delivery of services to
 98 sexually exploited children;

99 (6) Maintain records of all expenditures of the commission, funds received as gifts and
 100 donations, and disbursements made from the fund; and

101 (7) Conform to the standards and requirements prescribed by the state accounting officer
 102 pursuant to Chapter 5B of Title 50.

103 (b) The commission shall utilize existing state resources and staff of participating
 104 departments whenever practicable.

105 15-21-206.

106 The commission may recommend to the Governor and the General Assembly changes in
 107 state programs, statutes, policies, budgets, and standards relating to the care and
 108 rehabilitation of persons who have been sexually exploited, changes to improve
 109 coordination among state agencies that provide care and rehabilitative services, and
 110 changes to improve the condition of citizens who are in need of rehabilitative services.

111 15-21-207.

112 The commission may accept and solicit federal funds granted by Congress or executive
 113 order for the purposes of this article as well as gifts and donations from individuals, private
 114 organizations, or foundations. The acceptance and use of federal funds shall not commit
 115 state funds and shall not place an obligation upon the General Assembly to continue the
 116 purposes for which the federal funds are made available. All such funds received in the
 117 manner described in this Code section shall be transmitted to the state treasurer for deposit
 118 in the fund to be disbursed as other moneys in the fund.

119 15-21-208.

120 (a) There is created the Safe Harbor for Sexually Exploited Children Fund as a separate
 121 fund in the state treasury. The state treasurer shall credit to the fund all amounts transferred
 122 to the fund and shall invest the fund moneys in the same manner as authorized for investing
 123 other moneys in the state treasury.

124 (b) The commission may authorize the disbursement of available money from the fund,
 125 after appropriation thereof, for purposes of providing care, rehabilitative services,
 126 residential housing, health services, and social services, including establishing safe houses,
 127 to sexually exploited children and to a person, entity, or program eligible pursuant to

128 criteria to be set by the commission. The commission may also authorize the disbursement
 129 of fund money for the actual and necessary operating expenses that the commission incurs
 130 in performing its duties; provided, however, that such disbursements shall be kept at a
 131 minimum in furtherance of the primary purpose of the fund, which is to disburse money
 132 to provide care and rehabilitative services for sexually exploited children.

133 (c) No funds shall be disbursed from the fund to any person, entity, or program or for any
 134 purpose authorized in subsection (b) of this Code section until approved by the Governor;
 135 provided, however, that the Governor shall not authorize the disbursement of funds to a
 136 person, entity, or program which the commission has not recommended for a grant.

137 15-21-209.

138 (a) In every case in which any court in this state shall impose a fine, which shall be
 139 construed to include costs, for trafficking a person for sexual servitude in violation of Code
 140 Section 16-5-46 or any violation of Code Section 16-6-9, 16-6-10, 16-6-11, 16-6-12,
 141 16-6-16, or 16-12-100, there shall be imposed an additional penalty of \$2,500.00.

142 (b) Such sums shall be in addition to any amount required to be paid into any pension,
 143 annuity, or retirement fund under Title 47 or any other law and in addition to any other
 144 amounts provided for in this chapter.

145 15-21-210.

146 The sums provided for in Code Section 15-21-209 shall be assessed and collected by the
 147 clerk or court officer charged with the duty of collecting moneys arising from fines and
 148 shall be paid over by the last day of the following month to the Georgia Superior Court
 149 Clerks' Cooperative Authority for remittance to the Safe Harbor for Sexually Exploited
 150 Children Fund, to be deposited into the Safe Harbor for Sexually Exploited Children Fund.

151 15-21-211.

152 Any person whose duty it is to collect and remit the sums provided for in this article who
 153 refuses to so remit shall be guilty of a misdemeanor."

154 **SECTION 3.**

155 Code Section 16-3-6 of the Official Code of Georgia Annotated, relating to affirmative
 156 defense to certain sexual crimes, is amended by revising subsection (b) as follows:

157 "(b) A person shall not be guilty of a sexual crime if the conduct upon which the alleged
 158 criminal liability is based was committed under coercion or deception while the accused
 159 was being trafficked for sexual servitude in violation of subsection (c) of Code Section
 160 16-5-46. If the person suspected of engaging in a sexual crime was 18 years of age or

161 younger at the time of the offense, there shall be a legal presumption that he or she was
162 being trafficked for sexual servitude in violation of subsection (c) of Code Section
163 16-5-46."

164 **SECTION 4.**

165 Sections 1, 3, 5, and this section of this Act shall become effective on July 1, 2013. Section
166 2 of this Act shall become effective on January 1, 2015, only if there is ratified at the
167 November, 2014, general election a constitutional amendment authorizing the General
168 Assembly to provide specific funding to the Safe Harbor for Sexually Exploited Children
169 Fund Commission. If such an amendment to the Constitution of Georgia is not so ratified,
170 then Section 2 of this Act shall not become effective and shall stand repealed by operation
171 of law.

172 **SECTION 5.**

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