Senate Bill 8 - Prefile
By: Senator Unterman of the 45th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 3 of Title 9, Chapter 21 of Title 15, Title 16, and Article 1 of Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to limitations of actions, payment and disposition of fines and forfeitures, crimes and offenses, and children and youth services, respectively, so as to make provisions for children who have been sexually exploited; to provide for legislative findings and a purpose statement; to extend the statute of limitations for actions for childhood sexual abuse; to change provisions relating to the statute of limitations for injuries to the person; to change provisions relating to tolling of limitations for a minor's cause of action; to change provisions relating to the tolling of limitations for tort actions while criminal prosecution is pending; to create the Safe Harbor for Sexually Exploited Children Fund and the Safe Harbor for Sexually Exploited Children Fund Commission; to provide for definitions; to provide for appointment of members of the commission and personnel; to provide for duties of the commission and allow for expenses; to provide for recommendations of changes in state programs, laws, and policies; to provide for acceptance of federal funds and individual donations; to provide for fines and penalties; to provide for collection of fines and disposition of moneys collected; to provide for a duty to collect; to change provisions relating to affirmative defenses for certain sexual crimes; to increase the criminal penalty for masturbation for hire; to require the Department of Human Services to implement a plan to provide services to sexually exploited children; to provide for related matters; to provide for an effective date and contingent effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I

SECTION 1-1.

(a) The General Assembly finds that arresting, prosecuting, and incarcerating victimized children serves to retraumatize children and increases their feelings of low self-esteem,
making the process of recovery more difficult. The General Assembly acknowledges that both federal and state laws recognize that sexually exploited children are the victims of crime and should be treated as such. Therefore, the General Assembly finds that sexually exploited children should not be prosecuted for criminal acts related to prostitution, sodomy, solicitation of sodomy, or masturbation for hire, but should, when possible, be diverted into services that address the needs of these children outside of the justice system. The General Assembly finds that sexually exploited children deserve the protection of child welfare services, including family support, crisis intervention, counseling, and emergency housing services.

(b) The purpose of this Act is to protect a child from further victimization after he or she is discovered to be a sexually exploited child by ensuring that a child protective response is in place in this state.

PART II

SECTION 2-1.

Chapter 3 of Title 9 of the Official Code of Georgia Annotated, relating to limitations of actions, is amended by revising Code Section 9-3-33, relating to limitations for actions for injuries to the person, as follows:

"9-3-33.
Except as otherwise provided in this article, actions for injuries to the person shall be brought within two years after the right of action accrues, except for injuries to the reputation, which shall be brought within one year after the right of action accrues, and except for actions for injuries to the person involving loss of consortium, which shall be brought within four years after the right of action accrues."

SECTION 2-2.

Said chapter is further amended by revising Code Section 9-3-33.1, relating to limitations for actions for childhood sexual abuse, as follows:

"9-3-33.1.
(a)(1) As used in this Code section subsection, the term 'childhood sexual abuse' means any act committed by the defendant against the plaintiff which occurred when the plaintiff was under the age of 18 years of age and which would have been proscribed by Code Section 16-6-1, relating to rape; Code Section 16-6-2, relating to sodomy and aggravated sodomy; Code Section 16-6-3, relating to statutory rape; Code Section 16-6-4, relating to child molestation and aggravated child molestation; Code Section 16-6-5, relating to enticing a child for indecent purposes; Code Section 16-6-12, relating to
pandering, Code Section 16-6-14, relating to pandering by compulsion; Code Section 16-6-15, relating to solicitation of sodomy; Code Section 16-6-22, relating to incest; Code Section 16-6-22.1, relating to sexual battery; or Code Section 16-6-22.2, relating to aggravated sexual battery, or any prior laws of this state of similar effect which were in effect at the time the act was committed be in violation of:

(A) Rape, as prohibited in Code Section 16-6-1;
(B) Sodomy or aggravated sodomy, as prohibited in Code Section 16-6-2;
(C) Statutory rape, as prohibited in Code Section 16-6-3;
(D) Child molestation or aggravated child molestation, as prohibited in Code Section 16-6-4;
(E) Enticing a child for indecent purposes, as prohibited in Code Section 16-6-5;
(F) Pandering, as prohibited in Code Section 16-6-12;
(G) Pandering by compulsion, as prohibited in Code Section 16-6-14;
(H) Solicitation of sodomy, as prohibited in Code Section 16-6-15;
(I) Incest, as prohibited in Code Section 16-6-22;
(J) Sexual battery, as prohibited in Code Section 16-6-22.1; or
(K) Aggravated sexual battery, as prohibited in Code Section 16-6-22.2.

(b)(2) Notwithstanding Code Section 9-3-33, any civil action for recovery of damages suffered as a result of childhood sexual abuse committed before July 1, 2015, shall be commenced within five years of the date the plaintiff attains the age of majority.

(b)(1) As used in this subsection, the term 'childhood sexual abuse' means any act committed by the defendant against the plaintiff which occurred when the plaintiff was under 18 years of age and which would be in violation of:

(A) Trafficking a person for sexual servitude, as prohibited in Code Section 16-5-46;
(B) Rape, as prohibited in Code Section 16-6-1;
(C) Statutory rape, as prohibited in Code Section 16-6-3, if the defendant was 21 years of age or older at the time of the act;
(D) Aggravated sodomy, as prohibited in Code Section 16-6-2;
(E) Child molestation or aggravated child molestation, as prohibited in Code Section 16-6-4, unless the violation would be subject to punishment as provided in paragraph (2) of subsection (b) of Code Section 16-6-4 or paragraph (2) of subsection (d) of Code Section 16-6-4;
(F) Enticing a child for indecent purposes, as prohibited in Code Section 16-6-5, unless the violation would be subject to punishment as provided in subsection (c) of Code Section 16-6-5;
(G) Incest, as prohibited in Code Section 16-6-22;
(H) Aggravated sexual battery, as prohibited in Code Section 16-6-22.2; or

(I) Part 2 of Article 3 of Chapter 12 of Title 16.

(2) Notwithstanding Code Section 9-3-33, any civil action for recovery of damages suffered as a result of childhood sexual abuse committed on or after July 1, 2015, shall be commenced on or before the date the plaintiff attains the age of 25."

SECTION 2-3.

Said chapter is further amended by revising Code Section 9-3-90, relating to persons under disability or imprisoned when cause of action accrues, as follows:

"9-3-90.

(a) Individuals. Minors and persons who are legally incompetent because of mental retardation or mental illness, who are such when the cause of action accrues, shall be entitled to the same time after their disability is removed to bring an action as is prescribed for other persons.

(b) Except as otherwise provided in Code Section 9-3-33.1, individuals who are less than 18 years of age when a cause of action accrues shall be entitled to the same time after he or she reaches the age of 18 years to bring an action as is prescribed for other persons.

(b)(c) No action accruing to a person imprisoned at the time of its accrual which, prior:

(1) Prior to July 1, 1984, has been barred by the provisions of this chapter relating to limitations of actions shall be revived by this chapter, as amended. No action accruing to a person imprisoned at the time of its accrual which would; or

(2) Would be barred before July 1, 1984, by the provisions of this chapter, as amended, but which would not be so barred by the provisions of this chapter in force immediately prior to July 1, 1984, shall be barred until July 1, 1985."

SECTION 2-4.

Said chapter is further amended by revising Code Section 9-3-99, relating to tolling of limitations for tort actions while criminal prosecution is pending, as follows:

"9-3-99.

The running of the period of limitations with respect to any cause of action in tort that may be brought by the victim of an alleged crime which arises out of the facts and circumstances relating to the commission of such alleged crime committed in this state shall be tolled from the date of the commission of the alleged crime or the act giving rise to such action in tort until the prosecution of such crime or act has become final or otherwise terminated, provided that such time does not exceed six years, except as otherwise provided in Code Section 9-3-33.1."
Chapter 21 of Title 15 of the Official Code of Georgia Annotated, relating to payment and disposition of fines and forfeitures, is amended by adding a new article to read as follows:

"ARTICLE 11

15-21-200. This article is enacted pursuant to Article III, Section IX, Paragraph VI(o) of the Constitution, which provision authorizes additional penalty assessments for violations relating to certain sexual crimes and provides that the proceeds derived therefrom may be used for the purpose of meeting the costs of care and rehabilitative and social services for certain citizens of this state who have been sexually exploited.

15-21-201. As used in this article, the term:

(1) 'Commission' means the Safe Harbor for Sexually Exploited Children Fund Commission.
(2) 'Fund' means the Safe Harbor for Sexually Exploited Children Fund.
(3) 'Safe house' means a licensed residential facility that provides safe and secure shelter.
(4) 'Sexually explicit conduct' shall have the same meaning as set forth in Code Section 16-12-100.
(5) 'Sexually exploited child' means a person who is younger than 18 years of age who:
   (A) Has been the victim of trafficking of persons for sexual servitude in violation of Code Section 16-5-46;
   (B) Has engaged in sodomy, prostitution, solicitation of sodomy, or masturbation for hire; or
   (C) Has been the victim of sexually explicit conduct for the purpose of producing any print or visual medium.
(6) 'Visual medium' shall have the same meaning as set forth in Code Section 16-12-100.

15-21-202. (a) There is established the Safe Harbor for Sexually Exploited Children Fund Commission which is assigned to the Division of Family and Children Services of the Department of Human Resources for administrative purposes only, as prescribed in Code Section 50-4-3.
(b) There is created the Safe Harbor for Sexually Exploited Children Fund as a separate fund in the state treasury. The state treasurer shall credit to the fund all amounts transferred to the fund and shall invest the fund moneys in the same manner as authorized for investing other moneys in the state treasury.

(c) The commission may authorize the disbursement of available money from the fund, after appropriation thereof, for purposes of providing care, rehabilitative services, residential housing, health services, and social services, including establishing safe houses, to sexually exploited children and to a person, entity, or program eligible pursuant to criteria to be set by the commission. The commission may also authorize the disbursement of fund money for the actual and necessary operating expenses that the commission incurs in performing its duties; provided, however, that such disbursements shall be kept at a minimum in furtherance of the primary purpose of the fund, which is to disburse money to provide care and rehabilitative and social services for sexually exploited children.

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

15-21-203.

(a) The commission shall consist of eight members who shall serve for terms of two years, except that with respect to the first members appointed, two members shall be appointed for terms of three years, four for terms of two years, and two for terms of one year. The executive director of the Governor's Office for Children and Families, the chairperson of the Criminal Justice Coordinating Council, and the commissioners of the Department of Human Services and the Department of Behavioral Health and Developmental Disabilities shall each appoint one member of the commission; the remaining four members shall be appointed by the Governor. The Governor shall establish initial terms of office for all members of the commission within the limitations of this subsection.

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

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

(d) The Governor shall designate a chairperson of the commission from among the members, which chairperson shall serve in that position at the pleasure of the Governor. The commission may elect such other officers and committees as it considers appropriate.
The commission, with the approval of the Governor, may employ such professional, technical, or clerical personnel as deemed necessary to carry out the purposes of this article.

15-21-204.
Members of the commission shall serve without compensation but shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member of the commission is in attendance at a meeting of such commission, plus either reimbursement for actual transportation costs while traveling by public carrier or the same mileage allowance for use of a personal car in connection with such attendance as members of the General Assembly receive. Such expense and travel allowance shall be paid in lieu of any per diem, allowance, or other remuneration now received by any such member for such attendance. Expense allowances and other costs authorized in this Code section shall be paid from moneys in the fund.

15-21-205.
(a) The commission shall:
(1) Meet at such times and places as it shall determine necessary or convenient to perform its duties on the call of the chairperson or the Governor;
(2) Maintain minutes of its meetings;
(3) Adopt rules and regulations for the transaction of its business;
(4) Accept applications for disbursements of available money from the fund;
(5) Develop a state-wide protocol for helping to coordinate the delivery of services to sexually exploited children;
(6) Provide oversight and accountability for any program that receives disbursements from the fund;
(7) Maintain records of all its expenditures, funds received as gifts and donations, and disbursements made from the fund; and
(8) Conform to the standards and requirements prescribed by the state accounting officer pursuant to Chapter 5B of Title 50.
(b) The commission shall utilize existing state resources and staff of participating departments whenever practicable.

15-21-206.
The commission may recommend to the Governor and the General Assembly changes in state programs, laws, policies, budgets, and standards relating to the care and rehabilitation of sexually exploited children, changes to improve coordination among state agencies that
provide care and rehabilitative and social services to sexually exploited children, and changes to improve the condition of sexually exploited children who are in need of rehabilitative and social services.

15-21-207.
The commission may accept and solicit federal funds granted by Congress or executive order for the purposes of this article as well as gifts and donations from individuals, private organizations, or foundations. The acceptance and use of federal funds shall not commit state funds and shall not place an obligation upon the General Assembly to continue the purposes for which the federal funds are made available. All such funds received in the manner described in this Code section shall be transmitted to the state treasurer for deposit into the fund to be disbursed as other moneys in the fund.

15-21-208.
(a) In every case in which any court in this state shall impose a fine, which shall be construed to include costs, for trafficking a person for sexual servitude in violation of Code Section 16-5-46 or any violation of Code Section 16-6-2, 16-6-9, 16-6-10, 16-6-11, 16-6-12, 16-6-14, 16-6-15, 16-6-16, or 16-12-100, there shall be imposed an additional penalty of $2,500.00 if the defendant was 18 years of age or older at the time of the offense.

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

(c) The sums provided for in this Code section shall be assessed and collected by the clerk or court officer charged with the duty of collecting moneys arising from fines and shall be paid over by the last day of the following month to the Georgia Superior Court Clerks' Cooperative Authority for remittance to the Safe Harbor for Sexually Exploited Children Fund, to be deposited into the Safe Harbor for Sexually Exploited Children Fund.

15-21-209.
Any person whose duty it is to collect and remit the sums provided for in this article who refuses to so remit shall be guilty of a misdemeanor."
PART IV

SECTION 4-1.

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

“(...)

SECTION 4-2.

Said title is further amended by revising Code Section 16-6-16, relating to masturbation for hire, as follows:

“(...)

SECTION 4-3.

Article 1 of Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to children and youth services, is amended by revising Code Section 49-5-8, relating to the powers and duties of department, by adding a new subsection to read as follows:
"(d)(1) As used in this subsection, the term 'sexually exploited child' shall have the same
meaning as set forth in Code Section 15-21-201.
(2) The department, in consultation with the Office of the Child Advocate for the
Protection of Children and the Criminal Justice Coordinating Council, shall develop a
plan for the delivery of services to sexually exploited children and victims of trafficking
of persons for labor servitude. In developing such plan, the department shall work with
state and federal agencies, public and private entities, and other stakeholders as it deems
appropriate and shall periodically review such plans to ensure appropriate services are
being delivered. Such plan shall include:
   (A) Identifying children who need services;
   (B) Providing assistance with applications for federal and state benefits, compensation,
   and services;
   (C) Coordinating the delivery of physical and mental health, housing, education, job
   training, child care, legal, and other services;
   (D) Preparing and disseminating educational and training materials to increase
   awareness of available services;
   (E) Developing and maintaining community based services;
   (F) Providing assistance with family reunification or repatriation to a country of origin;
   and
   (G) Providing law enforcement officials assistance in identifying children in need of
   such services."

PART V
SECTION 5-1.

Parts 1, 3, and 4 and this part of this Act shall become effective on July 1, 2015. Part 2 of
this Act shall become effective on January 1, 2017, provided that a constitutional amendment
is passed by the General Assembly and is ratified by the voters in the November, 2016,
General Election amending the Constitution of Georgia to authorize the General Assembly
to provide specific funding to the Safe Harbor for Sexually Exploited Children Fund. If such
an amendment to the Constitution of Georgia is not so ratified, then Part 2 of this Act shall
not become effective and shall stand repealed by operation of law.

SECTION 5-2.
All laws and parts of laws in conflict with this Act are repealed.