

Senate Bill 8 - Prefile

By: Senator Unterman of the 45th

A BILL TO BE ENTITLED
AN ACT

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

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

22 **PART I**
23 **SECTION 1-1.**

24 (a) The General Assembly finds that arresting, prosecuting, and incarcerating victimized
25 children serves to retraumatize children and increases their feelings of low self-esteem,

26 making the process of recovery more difficult. The General Assembly acknowledges that
 27 both federal and state laws recognize that sexually exploited children are the victims of
 28 crime and should be treated as such. Therefore, the General Assembly finds that sexually
 29 exploited children should not be prosecuted for criminal acts related to prostitution,
 30 sodomy, solicitation of sodomy, or masturbation for hire, but should, when possible, be
 31 diverted into services that address the needs of these children outside of the justice system.
 32 The General Assembly finds that sexually exploited children deserve the protection of child
 33 welfare services, including family support, crisis intervention, counseling, and emergency
 34 housing services.

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

38 PART II

39 SECTION 2-1.

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

43 "9-3-33.

44 ~~Except as otherwise provided in this article, actions~~ Actions for injuries to the person shall
 45 be brought within two years after the right of action accrues, except for injuries to the
 46 reputation, which shall be brought within one year after the right of action accrues, and
 47 except for actions for injuries to the person involving loss of consortium, which shall be
 48 brought within four years after the right of action accrues."

49 SECTION 2-2.

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

52 "9-3-33.1.

53 (a)(1) As used in this ~~Code section subsection~~, the term 'childhood sexual abuse' means
 54 any act committed by the defendant against the plaintiff which ~~act~~ occurred when the
 55 plaintiff was under ~~the age of~~ 18 years of age and which ~~act~~ would ~~have been proscribed~~
 56 ~~by Code Section 16-6-1, relating to rape; Code Section 16-6-2, relating to sodomy and~~
 57 ~~aggravated sodomy; Code Section 16-6-3, relating to statutory rape; Code Section 16-6-4,~~
 58 ~~relating to child molestation and aggravated child molestation; Code Section 16-6-5,~~
 59 ~~relating to enticing a child for indecent purposes; Code Section 16-6-12, relating to~~

60 ~~pandering, Code Section 16-6-14, relating to pandering by compulsion; Code Section~~
 61 ~~16-6-15, relating to solicitation of sodomy; Code Section 16-6-22, relating to incest; Code~~
 62 ~~Section 16-6-22.1, relating to sexual battery, or Code Section 16-6-22.2, relating to~~
 63 ~~aggravated sexual battery, or any prior laws of this state of similar effect which were in~~
 64 ~~effect at the time the act was committed be in violation of:~~

- 65 (A) Rape, as prohibited in Code Section 16-6-1;
- 66 (B) Sodomy or aggravated sodomy, as prohibited in Code Section 16-6-2;
- 67 (C) Statutory rape, as prohibited in Code Section 16-6-3;
- 68 (D) Child molestation or aggravated child molestation, as prohibited in Code Section
 69 16-6-4;
- 70 (E) Enticing a child for indecent purposes, as prohibited in Code Section 16-6-5;
- 71 (F) Pandering, as prohibited in Code Section 16-6-12;
- 72 (G) Pandering by compulsion, as prohibited in Code Section 16-6-14;
- 73 (H) Solicitation of sodomy, as prohibited in Code Section 16-6-15;
- 74 (I) Incest, as prohibited in Code Section 16-6-22;
- 75 (J) Sexual battery, as prohibited in Code Section 16-6-22.1; or
- 76 (K) Aggravated sexual battery, as prohibited in Code Section 16-6-22.2.

77 ~~(b)(2) Notwithstanding Code Section 9-3-33, any Any~~ civil action for recovery of
 78 damages suffered as a result of childhood sexual abuse committed before July 1, 2015,
 79 ~~shall be commenced within five years of~~ on or before the date the plaintiff attains the age
 80 of majority 23.

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

- 84 (A) Trafficking a person for sexual servitude, as prohibited in Code Section 16-5-46;
- 85 (B) Rape, as prohibited in Code Section 16-6-1;
- 86 (C) Statutory rape, as prohibited in Code Section 16-6-3, if the defendant was 21 years
 87 of age or older at the time of the act;
- 88 (D) Aggravated sodomy, as prohibited in Code Section 16-6-2;
- 89 (E) Child molestation or aggravated child molestation, as prohibited in Code Section
 90 16-6-4, unless the violation would be subject to punishment as provided in paragraph
 91 (2) of subsection (b) of Code Section 16-6-4 or paragraph (2) of subsection (d) of Code
 92 Section 16-6-4;
- 93 (F) Enticing a child for indecent purposes, as prohibited in Code Section 16-6-5, unless
 94 the violation would be subject to punishment as provided in subsection (c) of Code
 95 Section 16-6-5;
- 96 (G) Incest, as prohibited in Code Section 16-6-22;

97 (H) Aggravated sexual battery, as prohibited in Code Section 16-6-22.2; or

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

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

102 SECTION 2-3.

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

105 "9-3-90.

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

110 (b) Except as otherwise provided in Code Section 9-3-33.1, individuals who are less than
 111 18 years of age when a cause of action accrues shall be entitled to the same time after he
 112 or she reaches the age of 18 years to bring an action as is prescribed for other persons.

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

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

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

121 SECTION 2-4.

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

124 "9-3-99.

125 The running of the period of limitations with respect to any cause of action in tort that may
 126 be brought by the victim of an alleged crime which arises out of the facts and
 127 circumstances relating to the commission of such alleged crime committed in this state
 128 shall be tolled from the date of the commission of the alleged crime or the act giving rise
 129 to such action in tort until the prosecution of such crime or act has become final or
 130 otherwise terminated, provided that such time does not exceed six years, except as
 131 otherwise provided in Code Section 9-3-33.1."

PART III
SECTION 3-1.

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.

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

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

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

181 15-21-203.

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

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

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

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

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

202 15-21-204.

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

212 15-21-205.

213 (a) The commission shall:

214 (1) Meet at such times and places as it shall determine necessary or convenient to
 215 perform its duties on the call of the chairperson or the Governor;

216 (2) Maintain minutes of its meetings;

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

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

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

221 (6) Provide oversight and accountability for any program that receives disbursements
 222 from the fund;

223 (7) Maintain records of all its expenditures, funds received as gifts and donations, and
 224 disbursements made from the fund; and

225 (8) Conform to the standards and requirements prescribed by the state accounting officer
 226 pursuant to Chapter 5B of Title 50.

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

229 15-21-206.

230 The commission may recommend to the Governor and the General Assembly changes in
 231 state programs, laws, policies, budgets, and standards relating to the care and rehabilitation
 232 of sexually exploited children, changes to improve coordination among state agencies that

233 provide care and rehabilitative and social services to sexually exploited children, and
234 changes to improve the condition of sexually exploited children who are in need of
235 rehabilitative and social services.

236 15-21-207.

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

244 15-21-208.

245 (a) In every case in which any court in this state shall impose a fine, which shall be
246 construed to include costs, for trafficking a person for sexual servitude in violation of Code
247 Section 16-5-46 or any violation of Code Section 16-6-2, 16-6-9, 16-6-10, 16-6-11,
248 16-6-12, 16-6-14, 16-6-15, 16-6-16, or 16-12-100, there shall be imposed an additional
249 penalty of \$2,500.00 if the defendant was 18 years of age or older at the time of the
250 offense.

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

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

259 15-21-209.

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

262

PART IV

263

SECTION 4-1.

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

267 "(b) A person shall not be guilty of a sexual crime if the conduct upon which the alleged
 268 criminal liability is based was committed by an accused who was less than 18 years of age
 269 at the time of the conduct or was committed under coercion or deception while the accused
 270 was being trafficked for sexual servitude in violation of subsection (c) of Code Section
 271 16-5-46."

272

SECTION 4-2.

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

275 "16-6-16.

276 (a) A person, including a masseur or masseuse, commits the offense of masturbation for
 277 hire when he or she erotically stimulates the genital organs of another, whether resulting
 278 in orgasm or not, by manual or other bodily contact exclusive of sexual intercourse or by
 279 instrumental manipulation for money or the substantial equivalent thereof.

280 (b)(1) A person ~~committing~~ convicted of the offense of masturbation for hire when such
 281 offense involves the conduct of a person who is at least 16 but less than 18 years of age
 282 shall be guilty of a misdemeanor or felony and shall be punished by imprisonment for a
 283 period of not less than five nor more than 20 years, a fine of not less than \$2,500.00 nor
 284 more than \$10,000.00, or both.

285 (2) A person convicted of the offense of masturbation for hire when such offense
 286 involves the conduct of a person under the age of 16 years shall be guilty of a felony and
 287 shall be punished by imprisonment for a period of not less than ten nor more than 30
 288 years, a fine of not more than \$100,000.00, or both.

289 (c) Adjudication of guilt or imposition of a sentence for a conviction of a second or
 290 subsequent offense of violating this Code section, including a plea of nolo contendere, shall
 291 not be suspended, probated, deferred, or withheld."

292

SECTION 4-3.

293 Article 1 of Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to
 294 children and youth services, is amended by revising Code Section 49-5-8, relating to the
 295 powers and duties of department, by adding a new subsection to read as follows:

296 “(d)(1) As used in this subsection, the term 'sexually exploited child' shall have the same
 297 meaning as set forth in Code Section 15-21-201.

298 (2) The department, in consultation with the Office of the Child Advocate for the
 299 Protection of Children and the Criminal Justice Coordinating Council, shall develop a
 300 plan for the delivery of services to sexually exploited children and victims of trafficking
 301 of persons for labor servitude. In developing such plan, the department shall work with
 302 state and federal agencies, public and private entities, and other stakeholders as it deems
 303 appropriate and shall periodically review such plans to ensure appropriate services are
 304 being delivered. Such plan shall include:

305 (A) Identifying children who need services;

306 (B) Providing assistance with applications for federal and state benefits, compensation,
 307 and services;

308 (C) Coordinating the delivery of physical and mental health, housing, education, job
 309 training, child care, legal, and other services;

310 (D) Preparing and disseminating educational and training materials to increase
 311 awareness of available services;

312 (E) Developing and maintaining community based services;

313 (F) Providing assistance with family reunification or repatriation to a country of origin;
 314 and

315 (G) Providing law enforcement officials assistance in identifying children in need of
 316 such services.”

317 **PART V**

318 **SECTION 5-1.**

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

326 **SECTION 5-2.**

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