

House Bill 17 (COMMITTEE SUBSTITUTE)

By: Representatives Spencer of the 180th, Oliver of the 82nd, Rakestraw of the 19th, Brockway of the 102nd, Morris of the 156th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 3 of Title 9 and Article 2 of Chapter 5 of Title 49 of the Official Code of
2 Georgia Annotated, relating to limitations of actions and child abuse and deprivation records,
3 respectively, so as to extend the statute of limitations for actions for childhood sexual abuse
4 under certain circumstances; to provide for retroactive claims for childhood sexual abuse
5 under certain circumstances; to provide for limitations of liability for certain legal entities;
6 to change provisions relating to tolling of limitations for a minor's cause of action; to change
7 provisions relating to the tolling of limitations for tort actions while criminal prosecution is
8 pending; to change provisions relating to the confidentiality and use of certain records; to
9 provide for a short title; to provide for related matters; to provide for an effective date; to
10 repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

13 This Act shall be known and may be cited as the "Hidden Predator Act."

14 style="text-align:center">**SECTION 2.**

15 Chapter 3 of Title 9 of the Official Code of Georgia Annotated, relating to limitations of
16 actions, is amended by revising Code Section 9-3-33.1, relating to limitations for actions for
17 childhood sexual abuse, as follows:

18 "9-3-33.1.

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

26 ~~pandering; Code Section 16-6-14, relating to pandering by compulsion; Code Section~~
 27 ~~16-6-15, relating to solicitation of sodomy; Code Section 16-6-22, relating to incest; Code~~
 28 ~~Section 16-6-22.1, relating to sexual battery, or Code Section 16-6-22.2, relating to~~
 29 ~~aggravated sexual battery, or any prior laws of this state of similar effect which were in~~
 30 ~~effect at the time the act was committed be in violation of:~~

- 31 (A) Rape, as prohibited in Code Section 16-6-1;
- 32 (B) Sodomy or aggravated sodomy, as prohibited in Code Section 16-6-2;
- 33 (C) Statutory rape, as prohibited in Code Section 16-6-3;
- 34 (D) Child molestation or aggravated child molestation, as prohibited in Code Section
 35 16-6-4;
- 36 (E) Enticing a child for indecent purposes, as prohibited in Code Section 16-6-5;
- 37 (F) Pandering, as prohibited in Code Section 16-6-12;
- 38 (G) Pandering by compulsion, as prohibited in Code Section 16-6-14;
- 39 (H) Solicitation of sodomy, as prohibited in Code Section 16-6-15;
- 40 (I) Incest, as prohibited in Code Section 16-6-22;
- 41 (J) Sexual battery, as prohibited in Code Section 16-6-22.1; or
- 42 (K) Aggravated sexual battery, as prohibited in Code Section 16-6-22.2.

43 ~~(b)(2) Notwithstanding Code Section 9-3-33 and except as provided in subsection (d) of~~
 44 ~~this Code section, any Any civil action for recovery of damages suffered as a result of~~
 45 ~~childhood sexual abuse committed before July 1, 2015, shall be commenced within five~~
 46 ~~years of on or before the date the plaintiff attains the age of majority 23 years.~~

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

- 50 (A) Trafficking a person for sexual servitude, as prohibited in Code Section 16-5-46;
- 51 (B) Rape, as prohibited in Code Section 16-6-1;
- 52 (C) Statutory rape, as prohibited in Code Section 16-6-3, if the defendant was 21 years
 53 of age or older at the time of the act;
- 54 (D) Aggravated sodomy, as prohibited in Code Section 16-6-2;
- 55 (E) Child molestation or aggravated child molestation, as prohibited in Code Section
 56 16-6-4, unless the violation would be subject to punishment as provided in paragraph
 57 (2) of subsection (b) of Code Section 16-6-4 or paragraph (2) of subsection (d) of Code
 58 Section 16-6-4;
- 59 (F) Enticing a child for indecent purposes, as prohibited in Code Section 16-6-5, unless
 60 the violation would be subject to punishment as provided in subsection (c) of Code
 61 Section 16-6-5;
- 62 (G) Incest, as prohibited in Code Section 16-6-22;

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

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

65 (2)(A) Notwithstanding Code Section 9-3-33, any civil action for recovery of damages
66 suffered as a result of childhood sexual abuse committed on or after July 1, 2015, shall
67 be commenced:

68 (i) On or before the date the plaintiff attains the age of 23 years; or

69 (ii) Within two years from the date that the plaintiff knew or had reason to know of
70 such abuse and that such abuse resulted in injury to the plaintiff as established by
71 competent medical or psychological evidence.

72 (B) When a plaintiff's civil action is filed after the plaintiff attains the age of 23 years
73 but within two years from the date that the plaintiff knew or had reason to know of such
74 abuse and that such abuse resulted in injury to the plaintiff, the court shall determine
75 from admissible evidence in a pretrial finding when the discovery of the alleged
76 childhood sexual abuse occurred. The pretrial finding required under this subparagraph
77 shall be made within six months of the filing of the civil action.

78 (c)(1) As used in this subsection, the term:

79 (A) 'Clear and convincing evidence' means proof that will produce in the mind of the
80 trier of facts a firm belief or conviction as to the allegations sought to be established;
81 it is intermediate, being more than a mere preponderance, but does not require the
82 degree of certainty as does the standard of beyond a reasonable doubt.

83 (B) 'Entity' means an institution, agency, firm, business, corporation, or other public
84 or private legal entity.

85 (C) 'Person' means the individual alleged to have committed the act of childhood
86 sexual abuse.

87 (2) If the person was a volunteer or employee of an entity that owed a duty of care to the
88 plaintiff, or the person and the plaintiff were engaged in some activity over which such
89 entity had control, damages against such entity shall be awarded under this Code section
90 only if there is a finding of negligence by clear and convincing evidence on the part of
91 such entity.

92 (d)(1) It is the express intent of the General Assembly that for a period of two years
93 following July 1, 2015, plaintiffs of any age who were time barred from filing a civil
94 action for injuries resulting from childhood sexual abuse due to the expiration of the
95 statute of limitations in effect on June 30, 2015, shall be permitted to file such actions
96 against the individual alleged to have committed such abuse before July 1, 2017, thereby
97 reviving those civil actions which had lapsed or technically expired under the law in
98 effect on June 30, 2015.

- 99 (2) The revival of a claim as provided in paragraph (1) of this subsection shall not apply
 100 to:
 101 (A) Any claim that has been litigated to finality on the merits in a court of competent
 102 jurisdiction prior to July 1, 2015. Termination of a prior civil action on the basis of the
 103 expiration of the statute of limitations shall not constitute a claim that has been litigated
 104 to finality on the merits;
 105 (B) Any written settlement agreement which has been entered into between a plaintiff
 106 and a defendant when the plaintiff was represented by an attorney who was admitted
 107 to practice law in this state at the time of the settlement, and the plaintiff signed such
 108 agreement; and
 109 (C) Any claim against an entity, as such term is defined in subsection (c) of this Code
 110 section.
 111 (e) On and after July 1, 2017, this Code section shall be applied only prospectively."

112 **SECTION 3.**

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

115 "9-3-90.

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

120 (b) Except as otherwise provided in Code Section 9-3-33.1, individuals who are less than
 121 18 years of age when a cause of action accrues shall be entitled to the same time after he
 122 or she reaches the age of 18 years to bring an action as is prescribed for other persons.

123 ~~(b)~~(c) No action accruing to a ~~person~~ an individual imprisoned at the time of its accrual
 124 which, ~~prior;~~

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

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

131 **SECTION 4.**

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

134 "9-3-99.
 135 The running of the period of limitations with respect to any cause of action in tort that may
 136 be brought by the victim of an alleged crime which arises out of the facts and
 137 circumstances relating to the commission of such alleged crime committed in this state
 138 shall be tolled from the date of the commission of the alleged crime or the act giving rise
 139 to such action in tort until the prosecution of such crime or act has become final or
 140 otherwise terminated, provided that such time does not exceed six years, except as
 141 otherwise provided in Code Section 9-3-33.1."

142 SECTION 5.

143 Article 2 of Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to child
 144 abuse and deprivation records, is amended in Code Section 49-5-41, relating to persons and
 145 agencies permitted access to records, by adding a new subsection to read as follows:

146 "(f) Notwithstanding Code Section 49-5-40, a child who alleges that he or she was abused
 147 shall be permitted access to records concerning a report of child abuse allegedly committed
 148 against him or her which are in the custody of the department or other state or local agency
 149 when he or she reaches 18 years of age; provided, however, that prior to such child
 150 reaching 18 years of age, if the requestor is not the subject of such report, such reports shall
 151 be made available to such child's parent or legal guardian or a deceased child's duly
 152 appointed representative when the requestor or his or her attorney submits a sworn affidavit
 153 that attests that such information is relevant to a pending or proposed civil action; and
 154 provided, further, that such reports shall still be subject to confidentiality pursuant to
 155 paragraph (4) of subsection (a) of Code Section 50-18-72."

156 SECTION 6.

157 Said article is further amended by revising subsection (c) of Code Section 49-5-44, relating
 158 to penalties for unauthorized access to records and use of records in public and criminal
 159 proceedings, as follows:

160 "(c) Records made confidential by Code Section 49-5-40 and information obtained from
 161 such records ~~may~~ shall not be made a part of any record which is open to the public except
 162 that;

163 (1) A district attorney may use and make public that record or information in the course
 164 of any criminal prosecution for any offense which constitutes or results from child abuse;
 165 and
 166 (2) The parties in a civil action may use and make public that record or information in
 167 the course of a civil action for childhood sexual abuse, as such term is defined in Code
 168 Section 9-3-33.1."

169 **SECTION 7.**

170 This Act shall become effective on July 1, 2015.

171 **SECTION 8.**

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