

House Bill 605

By: Representatives Spencer of the 180th, Oliver of the 82nd, Brockway of the 102nd, Frye of the 118th, Rakestraw of the 19th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 3 of Title 9 of the Official Code of Georgia Annotated,
2 relating to specific periods of limitation, so as to change provisions relating to the revival of
3 certain claims involving childhood sexual abuse; to provide for civil actions by the Attorney
4 General under certain circumstances; to provide for a civil penalty; to provide for a report;
5 to provide for a short title; to provide for related matters; to provide for an effective date; to
6 repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 This Act shall be known and may be cited as the "Hidden Predator Act of 2018."

10 **SECTION 2.**

11 Article 2 of Chapter 3 of Title 9 of the Official Code of Georgia Annotated, relating to
12 specific periods of limitation, is amended by revising Code Section 9-3-33.1, relating to
13 actions for childhood sexual abuse, as follows:

14 "9-3-33.1.

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

18 (A) Rape, as prohibited in Code Section 16-6-1;

19 (B) Sodomy or aggravated sodomy, as prohibited in Code Section 16-6-2;

20 (C) Statutory rape, as prohibited in Code Section 16-6-3;

21 (D) Child molestation or aggravated child molestation, as prohibited in Code Section
22 16-6-4;

23 (E) Enticing a child for indecent purposes, as prohibited in Code Section 16-6-5;

24 (F) Pandering, as prohibited in Code Section 16-6-12;

25 (G) Pandering by compulsion, as prohibited in Code Section 16-6-14;

26 (H) Solicitation of sodomy, as prohibited in Code Section 16-6-15;

27 (I) Incest, as prohibited in Code Section 16-6-22;

28 (J) Sexual battery, as prohibited in Code Section 16-6-22.1; or

29 (K) Aggravated sexual battery, as prohibited in Code Section 16-6-22.2.

30 (2) Notwithstanding Code Section 9-3-33 and except as provided in subsection (d) of this
31 Code section, any civil action for recovery of damages suffered as a result of childhood
32 sexual abuse committed before July 1, 2015, shall be commenced on or before the date
33 the plaintiff attains the age of ~~23~~ 38 years.

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

37 (A) Trafficking a person for sexual servitude, as prohibited in Code Section 16-5-46;

38 (B) Rape, as prohibited in Code Section 16-6-1;

39 (C) Statutory rape, as prohibited in Code Section 16-6-3, if the defendant was 21 years
40 of age or older at the time of the act;

41 (D) Aggravated sodomy, as prohibited in Code Section 16-6-2;

42 (E) Child molestation or aggravated child molestation, as prohibited in Code Section
43 16-6-4, unless the violation would be subject to punishment as provided in paragraph
44 (2) of subsection (b) of Code Section 16-6-4 or paragraph (2) of subsection (d) of Code
45 Section 16-6-4;

46 (F) Enticing a child for indecent purposes, as prohibited in Code Section 16-6-5, unless
47 the violation would be subject to punishment as provided in subsection (c) of Code
48 Section 16-6-5;

49 (G) Incest, as prohibited in Code Section 16-6-22;

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

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

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

55 (i) On or before the date the plaintiff attains the age of ~~23~~ 38 years; or

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

59 (B) When a plaintiff's civil action is filed after the plaintiff attains the age of ~~23~~ 38
60 years but within two years from the date that the plaintiff knew or had reason to know
61 of such abuse and that such abuse resulted in injury to the plaintiff, the court shall
62 determine from admissible evidence in a pretrial finding when the discovery of the

63 alleged childhood sexual abuse occurred. The pretrial finding required under this
64 subparagraph shall be made within six months of the filing of the civil action.

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

66 (A) 'Entity' means an institution, agency, firm, business, corporation, or other public
67 or private ~~legal entity~~ organization.

68 (B) 'Person' means the individual alleged to have committed the act of childhood
69 sexual abuse.

70 (2) If a civil action for recovery of damages suffered as a result of childhood sexual
71 abuse is commenced pursuant to division (b)(2)(A)(i) of this Code section and if the
72 person was a volunteer or employee of an entity that owed a duty of care to the plaintiff,
73 or the person and the plaintiff were engaged in some activity over which such entity had
74 control, damages against such entity shall be awarded under this Code section only if by
75 a preponderance of the evidence there is a finding of negligence on the part of such
76 entity.

77 (3)(A) Except as provided for in subparagraph (B) of this paragraph, if a civil action
78 for recovery of damages suffered as a result of childhood sexual abuse is commenced
79 pursuant to division (b)(2)(A)(ii) of this Code section and if the person was a volunteer
80 or employee of an entity that owed a duty of care to the plaintiff, or the person and the
81 plaintiff were engaged in some activity over which such entity had control, damages
82 against such entity shall be awarded under this Code section only if by a preponderance
83 of the evidence there is a finding that there was gross negligence on the part of such
84 entity, that the entity knew or should have known of the alleged conduct giving rise to
85 the civil action, and that such entity failed to take remedial action.

86 (B) If a civil action for recovery of damages suffered as a result of childhood sexual
87 abuse is commenced pursuant to division (b)(2)(A)(ii) of this Code section, if such
88 action involves an allegation of the offense of trafficking a person for labor servitude
89 as provided for in Code Section 16-5-46, and if the person was a volunteer or employee
90 of an entity that owed a duty of care to the plaintiff, or the person and the plaintiff were
91 engaged in some activity over which such entity had control, damages against such
92 entity shall be awarded under this Code section only if by a preponderance of the
93 evidence there is a finding that there was negligence on the part of such entity, that the
94 entity knew or should have known of the alleged conduct giving rise to the civil action,
95 and that such entity failed to take remedial action.

96 (d)(1) For a period of two years following July 1, 2018, plaintiffs of any age who were
97 time barred from filing a civil action for injuries resulting from childhood sexual abuse
98 as provided for under this Code section due to the expiration of the statute of limitations
99 in effect on June 30, 2018, shall be permitted to file such actions against a person or an

100 entity negligent or grossly negligent in such abuse before July 1, 2020, thereby reviving
 101 those civil actions which had lapsed or technically expired under the law in effect on
 102 June 30, 2018.

103 (2)(A) Except as provided for in subparagraph (B) of this paragraph, with respect to
 104 a claim against an entity that has been revived as provided in paragraph (1) of this
 105 subsection, damages shall be awarded only if by a preponderance of the evidence there
 106 is a finding of gross negligence on the part of such entity, that such entity knew or
 107 should have known of the alleged conduct giving rise to the civil action, and that such
 108 entity failed to take remedial action.

109 (B) With respect to a claim against an entity that has been revived as provided in
 110 paragraph (1) of this subsection and that involves an allegation of the offense of
 111 trafficking a person for labor servitude as provided for in Code Section 16-5-46 or that
 112 alleges such entity provided material support to a person, damages shall be awarded
 113 only if by a preponderance of the evidence there is a finding of negligence on the part
 114 of such entity, that such entity knew or should have known of the alleged conduct
 115 giving rise to the civil action, and that such entity failed to take remedial action.

116 (3) The revival of a claim as provided in paragraph (1) of this subsection shall not apply
 117 to:

118 (A) Any claim that has been litigated to finality on the merits in a court of competent
 119 jurisdiction prior to July 1, 2018. Termination of a prior civil action on the basis of the
 120 expiration of the statute of limitations shall not constitute a claim that has been litigated
 121 to finality on the merits; and

122 (B) Any written settlement agreement which has been entered into between a plaintiff
 123 and a defendant when the plaintiff was represented by an attorney who was admitted
 124 to practice law in this state at the time of the settlement, and the plaintiff signed such
 125 agreement.

126 (4) This subsection shall be repealed effective July 1, 2020."

127 **SECTION 3.**

128 Said article is further amended by adding a new Code section to read as follows:

129 "9-3-33.2.

130 (a) As used in this Code section, the term:

131 (1) 'Childhood sexual abuse' shall have the same meaning as provided for in
 132 subsections (a) and (b) of Code Section 9-3-33.1.

133 (2) 'Entity' means an institution, agency, firm, business, corporation, or other public or
 134 private organization.

135 (3) 'Person' means the individual alleged to have committed the act of childhood sexual
136 abuse.

137 (b) Whenever the Attorney General has reasonable cause to believe that a person or entity
138 has been negligent or grossly negligent in the injury of individuals within this state as a
139 result of childhood sexual abuse and such negligence or gross negligence raises an issue
140 of general public importance, the Attorney General may commence a civil action as
141 provided for under Code Section 9-3-33.1 in any appropriate superior court.

142 (c) Upon timely application, any individual who is a victim of such person's or entity's
143 negligence or gross negligence may intervene in the civil action commenced by the
144 Attorney General under this Code section.

145 (d) Upon a finding that there was negligence or gross negligence on the part of such person
146 or entity in a civil action brought under this Code section, the court may:

147 (1) To vindicate the public interest, assess a civil penalty against the person or entity as
148 the court deems appropriate; and

149 (2) Award actual damages to any victim provided for in subsection (c) of this Code
150 section.

151 (e) Any civil penalty awarded pursuant to subsection (d) of this Code section shall, after
152 an offset of costs and expenses to the Attorney General for commencing and maintaining
153 such civil action, be paid over by the Attorney General into the state treasury. The
154 Attorney General shall report the paying over of such civil penalty award to the chairperson
155 of the Senate Appropriations Committee and the chairperson of the House Committee on
156 Appropriations for the consideration of such amount's appropriation into the Safe Harbor
157 for Sexually Exploited Children Fund."

158 **SECTION 4.**

159 This Act shall become effective on July 1, 2018.

160 **SECTION 5.**

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