

House Bill 234 (COMMITTEE SUBSTITUTE)

By: Representatives Efration of the 104th, Ballinger of the 23rd, Smyre of the 135th, Reeves of the 34th, Welch of the 110th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 9, 15, 16, 17, and 41 of the Official Code of Georgia Annotated, relating to
2 civil practice, courts, crimes and offenses, criminal procedure, and nuisances, respectively,
3 so as to provide additional safeguards and protections against human trafficking; to authorize
4 DFCS to provide care and supervision to children who are victims of human trafficking; to
5 expand prohibitions against trafficking of persons for labor or sexual servitude; to revise the
6 definition of prostitution; to increase the penalties for certain sexual offenses; to repeal the
7 crime of pandering by compulsion; to provide that the use of certain property in connection
8 with human trafficking constitutes a nuisance and to provide for what constitutes notice of
9 such use; to provide a short title; to provide for related matters; to conform certain
10 cross-references; to provide an effective date and for applicability; to repeal conflicting laws;
11 and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **PART I**
14 **SECTION 1-1.**

15 This Act shall be known and may be cited as the "Anti-Human Trafficking Protective
16 Response Act."

17 **SECTION 1-2.**

18 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising
19 subsection (a) of Code Section 15-11-130, relating to emergency care and supervision of
20 child without court order and immunity, as follows:

21 "(a) Notwithstanding Code Sections 15-11-133 and 15-11-135, DFCS shall be authorized
22 to provide emergency care and supervision to any child without seeking a court order for
23 a period not to exceed seven days when:

H. B. 234 (SUB)

24 (1)(A) As a result of an emergency or illness, the person who has physical and legal
 25 custody of a child is unable to provide for the care and supervision of such child, and
 26 such person or a law enforcement officer, emergency personnel employed by a licensed
 27 ambulance provider, fire rescue personnel, or a hospital administrator or his or her
 28 designee requests that DFCS exercise such emergency custody; and
 29 ~~(2)(B)~~ A child is not at imminent risk of abuse or neglect, other than the risks arising
 30 from being without a caretaker; or
 31 (2) The child is a victim of trafficking for labor or sexual servitude under Code
 32 Section 16-5-46."

33 SECTION 1-3.

34 Said title is further amended in Part 3 of Article 3 of Chapter 11, relating to taking into care,
 35 by adding a new Code section to read as follows:

36 "15-11-130.1.
 37 A law enforcement officer or agency or DFCS shall refer any child suspected of being a
 38 victim of sexual exploitation or trafficking under Code Section 16-5-46 to an available
 39 victim services organization, as certified by the Criminal Justice Coordinating Council,
 40 which provides comprehensive trauma-informed services designed to alleviate the adverse
 41 effects of trafficking victimization and to aid in the child's healing, including, but not
 42 limited to, assistance with case management, placement, access to educational and legal
 43 services, and mental health services."

44 SECTION 1-4.

45 Said title is further amended by revising subsection (a) of Code Section 15-11-133, relating
 46 to removal of child from the home and protective custody, as follows:

47 "(a) A child may be removed from his or her home, without the consent of his or her
 48 parents, guardian, or legal custodian:
 49 (1) Pursuant to an order of the court under this article; or
 50 (2) By a law enforcement officer or duly authorized officer of the court if:
 51 (A) A a child is in imminent danger of abuse or neglect if he or she remains in the
 52 home; or
 53 (B) A child is a victim of trafficking for labor or sexual servitude under Code
 54 Section 16-5-46."

55 **SECTION 1-5.**

56 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
 57 amended by revising subsections (c) and (f) of Code Section 16-5-46, relating to trafficking
 58 of persons for labor or sexual servitude, as follows:

59 "(c) A person commits the offense of trafficking an individual for sexual servitude when
 60 that person knowingly:

- 61 (1) Subjects an individual to or maintains an individual in sexual servitude;
 62 (2) Recruits, entices, harbors, transports, provides, solicits, patronizes, or obtains by any
 63 means an individual for the purpose of sexual servitude; or
 64 (3) ~~Solicits or patronizes by any means an individual to perform sexually explicit~~
 65 ~~conduct on behalf of such person when such individual is the subject of sexual servitude~~
 66 Benefits financially or by receiving anything of value from the sexual servitude of
 67 another."

68 "(f)(1) Except as provided in paragraph (2) of this subsection, any person who commits
 69 the offense of trafficking an individual for labor servitude or sexual servitude shall be
 70 guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for
 71 not less than ten nor more than 20 years and a fine not to exceed \$100,000.00.

72 (2) Any person who commits the offense of trafficking an individual for labor servitude
 73 or sexual servitude against an individual who is under 18 years of age and such individual
 74 under the age of 18 years was coerced or deceived into being trafficked for labor
 75 servitude or sexual servitude or if the offense is committed against an individual who has
 76 a developmental disability, the person shall be guilty of a felony, and upon conviction
 77 thereof, shall be punished by imprisonment for not less than 25 nor more than 50 years
 78 or life imprisonment and a fine not to exceed \$100,000.00.

79 ~~(3) Except as provided in paragraph (4) of this subsection, any person who violates~~
 80 ~~paragraph (1) or (2) of subsection (c) of this Code section shall be guilty of a felony, and~~
 81 ~~upon conviction thereof, shall be punished by imprisonment for not less than ten nor~~
 82 ~~more than 20 years.~~

83 ~~(4) Any person who violates paragraph (1) or (2) of subsection (c) of this Code section~~
 84 ~~committed against an individual under 18 years of age and such individual under the age~~
 85 ~~of 18 years was coerced or deceived into such violation or if such violation is committed~~
 86 ~~against an individual who has a developmental disability, such person shall be guilty of~~
 87 ~~a felony, and upon conviction thereof, shall be punished by imprisonment for not less~~
 88 ~~than 25 nor more than 50 years or life imprisonment.~~

89 ~~(5) Any person who violates paragraph (3) of subsection (c) of this Code section shall~~
 90 ~~be guilty of a felony. When such offense is committed against an individual who is 16~~
 91 ~~years of age or older, upon conviction, such person shall be punished by imprisonment~~

92 ~~for not less than five nor more than 20 years. When such offense is committed against~~
 93 ~~an individual who is younger than 16 years of age or an individual known to have a~~
 94 ~~developmental disability, upon conviction, such person shall be punished by~~
 95 ~~imprisonment for not less than ten nor more than 20 years."~~

96 **SECTION 1-6.**

97 Said title is further amended by revising Code Section 16-6-9, relating to prostitution, as
 98 follows:

99 "16-6-9.

100 A person, 18 years of age or older, commits the offense of prostitution when he or she
 101 performs or offers or consents to perform a sexual act, including, but not limited to, sexual
 102 intercourse or sodomy, for money or other items of value."

103 **SECTION 1-7.**

104 Said title is further amended by revising subsection (b) of Code Section 16-6-13, relating to
 105 penalties for violating Code Sections 16-6-9 through 16-6-12, as follows:

106 ~~"(b)(1) A person convicted of any of the offenses enumerated in Code Sections 16-6-10~~
 107 ~~through 16-6-12 when such offense involves the conduct of a person who is at least 16~~
 108 ~~but less than 18 years of age shall be guilty of a felony and shall be punished by~~
 109 ~~imprisonment for a period of not less than five nor more than 20 years, a fine of not less~~
 110 ~~than \$2,500.00 nor more than \$10,000.00, or both Reserved.~~

111 (2) A person convicted of any of the offenses enumerated in Code Sections 16-6-10
 112 through 16-6-12 when such offense involves the conduct of a person under the age of ~~16~~
 113 18 years shall be guilty of a felony and shall be punished by imprisonment for a period
 114 of not less than ten nor more than 30 years; and a fine of not more than \$100,000.00, ~~or~~
 115 ~~both.~~

116 (3) Adjudication of guilt or imposition of a sentence for a conviction of a second or
 117 subsequent offense pursuant to this subsection, including a plea of nolo contendere, shall
 118 not be suspended, probated, deferred, or withheld."

119 **SECTION 1-8.**

120 Said title is further amended by repealing Code Section 16-6-14, relating to pandering by
 121 compulsion, in its entirety and designating said Code section as reserved.

122 **SECTION 1-9.**

123 Title 41 of the Official Code of Georgia Annotated, relating to nuisances, is amended by
 124 revising Code Section 41-3-1, relating to establishment, maintenance, or use of building,
 125 structure, or place for unlawful sexual purposes and evidence of nuisance, as follows:

126 "41-3-1.

127 (a) As used in this Code section, the term 'sexually related charges' means an indictment
 128 by a grand jury or an accusation by a prosecuting attorney for an offense involving a
 129 violation of Code Section 16-5-46, 16-6-2, 16-6-8, 16-6-9, 16-6-10, 16-6-11, 16-6-12,
 130 16-6-15, or 16-6-16.

131 ~~(a)(b)~~ Whosoever shall knowingly erect, establish, continue, maintain, use, own, or lease
 132 any building, structure, or place used for the purpose of lewdness, prostitution, sodomy, the
 133 solicitation of sodomy, or masturbation for hire for the purposes of sexually related charges
 134 shall be guilty of maintaining a nuisance; provided, however, that he or she shall not be
 135 guilty of maintaining a nuisance when an indictment or accusation for such charges results
 136 directly from cooperation between the property owner or his or her agent and a law
 137 enforcement agency. The and the building, structure, or place, and the ground itself in or
 138 upon which such lewdness, prostitution, sodomy, the solicitation of sodomy, or
 139 masturbation for hire shall be sexually related charges occurred or were conducted,
 140 permitted, carried on, continued, or shall exist, and the furniture, fixtures, and other
 141 contents of such building or structure are also declared shall be deemed to be a nuisance
 142 and may be enjoined or otherwise abated as provided in this chapter.

143 ~~(b)(c)~~ The occurrence of either of the following shall be prima-facie evidence of the
 144 nuisance and the existence thereof when there is conviction of the owner or operator of any
 145 building, structure, or place for any of the offenses stated in subsection (a) of this Code
 146 section, based on conduct or an act or occurrence in or on the premises of such building,
 147 structure, or place, shall be prima-facie evidence of the nuisance and the existence thereof
 148 sexually related charges:

149 (1) A conviction of the owner or operator of any building, structure, or place for any
 150 sexually related charges, based on conduct or an act or occurrence in or on the premises
 151 of such building, structure, or place; or

152 (2) When the prosecuting attorney of the county in which the property is located notifies
 153 the owner in writing of three or more separate, unrelated sexually related charges that
 154 result in an indictment or accusation within a 12 month period; provided, however, that
 155 it shall not be prima-facie evidence when such charges result directly from cooperation
 156 between the property owner or his or her agent and a law enforcement agency.

157 (d) It shall be a defense to such nuisance claims if the owner, operator, or employee of
 158 such business, structure, or place aids law enforcement in the investigation of such criminal

159 activity by reporting suspicious activity leading to, by providing evidence leading to, or by
 160 inviting law enforcement onto the premises to conduct undercover operations leading to
 161 the indictment, accusation, or other formally charged cases of trafficking for labor or sexual
 162 servitude, lewdness, prostitution, sodomy, the solicitation of sodomy, or masturbation for
 163 hire."

164 **SECTION 1-10.**

165 Said title is further amended by revising subsections (a) and (c) of Code Section 41-3-1.1,
 166 relating to substantial drug related activity upon real property, knowledge of owner, and
 167 remedies cumulative, as follows:

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

169 (1) 'Drug related indictment charges' means an indictment by a grand jury or an
 170 accusation by a prosecuting attorney for an offense involving violation of Code Section
 171 16-13-30; provided, however, that such term shall not include any such indictments or
 172 accusations which result directly from cooperation between the property owner or his or
 173 her agent and a law enforcement agency ~~shall not be considered a drug related indictment~~
 174 ~~for purposes of this Code section.~~

175 (2) 'Substantial drug related activity' means activity resulting in six or more separate
 176 incidents resulting in drug related indictments charges involving violations occurring
 177 within a 12 month period on the same parcel of real property."

178 "(c) The owner of real property shall be deemed to have actual knowledge of substantial
 179 drug related activity occurring on a parcel of real property if the ~~district~~ prosecuting
 180 attorney of the county in which the property is located notifies the owner in writing of three
 181 or more separate incidents within a 12 month period which result in drug related
 182 indictments charges and, after the receipt of such notice and within 12 months of the first
 183 of the incidents resulting in a drug related indictment charges which are the subject of such
 184 notice, three or more separate incidents occur which result in drug related indictments
 185 charges."

186 **PART II**

187 **SECTION 2-1.**

188 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by
 189 revising paragraph (1) of subsection (a) of Code Section 9-3-33.1, relating to actions for
 190 childhood sexual abuse, as follows:

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

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

206 **SECTION 2-2.**

207 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising
 208 subsection (a) of Code Section 15-21-208, relating to financial penalty and collection, as
 209 follows:

210 "(a) In every case in which any court in this state shall impose a fine, which shall be
 211 construed to include costs, for trafficking a person for sexual servitude in violation of Code
 212 Section 16-5-46 or any violation of Code Section 16-6-10, 16-6-11, 16-6-12, ~~16-6-14,~~
 213 16-6-15, 16-6-16, or 16-12-100, there shall be imposed an additional penalty of \$2,500.00
 214 if the defendant was 18 years of age or older at the time of the offense."

215 **SECTION 2-3.**

216 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
 217 amended by revising subsection (b) of Code Section 16-6-13.2, relating to civil forfeiture of
 218 motor vehicle, as follows:

219 "(b) Any motor vehicle used by a person to facilitate a violation of Code Section 16-6-10,
 220 16-6-11 when the offense involved the pimping of a person to perform an act of
 221 prostitution, or 16-6-12, ~~or 16-6-14~~ is declared to be contraband and no person shall have
 222 a property right in it."

223 **SECTION 2-4.**

224 Said title is further amended by revising subsection (b) of Code Section 16-6-13.3, relating
225 to civil forfeiture of proceeds and property, as follows:

226 "(b) Any property which is, directly or indirectly, used or intended for use in any manner
227 to facilitate a violation of Code Section 16-6-10, 16-6-11, or 16-6-12, ~~or 16-6-14~~ and any
228 proceeds are declared to be contraband and no person shall have a property right in them."

229 **SECTION 2-5.**

230 Said title is further amended by revising division (5)(A)(vii) of Code Section 16-14-3,
231 relating to definitions regarding RICO, as follows:

232 "(vii) Prostitution, keeping a place of prostitution, pimping, and pandering, ~~and~~
233 ~~pandering by compulsion~~ in violation of Code Sections 16-6-9 through 16-6-12 and
234 ~~16-6-14;~~"

235 **SECTION 2-6.**

236 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
237 amended by revising subsection (b) of Code Section 17-8-55, relating to testimony of child
238 less than seventeen years old outside physical presence of accused, as follows:

239 "(b) This Code section shall apply to all proceedings when a child is a witness to or an
240 alleged victim of a violation of Code Section 16-5-1, 16-5-20, 16-5-23, 16-5-23.1, 16-5-40,
241 16-5-70, 16-5-90, 16-5-95, 16-6-1, 16-6-2, 16-6-3, 16-6-4, 16-6-5, 16-6-5.1, 16-6-11,
242 ~~16-6-14~~, 16-6-22, 16-6-22.1, 16-6-22.2, 16-8-41, or 16-15-4."

243 **PART III**

244 **SECTION 3-1.**

245 This Act shall become effective on July 1, 2019, and shall apply to offenses which occur on
246 or after that date. Any offense occurring before July 1, 2019, shall be governed by the statute
247 in effect at the time of such offense and shall be considered a prior conviction for the purpose
248 of imposing a sentence that provides for a different penalty for a subsequent conviction.

249 **SECTION 3-2.**

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