

Senate Bill 435

By: Senators Strickland of the 17th, Tillery of the 19th, Kirkpatrick of the 32nd, Albers of the 56th, Parent of the 42nd and others

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Article 1 of Chapter 10 of Title 17 and Article 2 of Chapter 3 of Title 35 of the
2 Official Code of Georgia Annotated, relating to procedure for sentencing and imposition of
3 punishment and the Georgia Crime Information Center, respectively, so as to provide that
4 the court imposing sentence may grant the relief of vacatur for convictions and sentences of
5 defendants who obtained such convictions and sentences as a direct result of being victims
6 of trafficking for labor or sexual servitude; to provide for petitions under seal; to provide for
7 remote electronic testimony; to provide for the restriction of access to criminal history record
8 information of individuals where such criminal history record information relates to
9 convictions obtained as a direct result of being victims of trafficking for labor or sexual
10 servitude; to provide burdens of proof; to provide for notices and hearings under certain
11 circumstances; to provide for definitions; to provide for a short title; to provide for related
12 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

13 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

14 **SECTION 1.**

15 This Act shall be known and may be cited as "The Survivors First Act."

16 **SECTION 2.**

17 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to
18 procedure for sentencing and imposition of punishment, is amended by adding a new Code
19 section to read as follows:

20 "17-10-21.

21 (a)(1) A defendant convicted of an offense and sentenced as a direct result of the
22 defendant being the victim of an offense of trafficking under Code Section 16-5-46 may
23 petition the court imposing the sentence to vacate such conviction. Such court shall
24 maintain the jurisdiction, power, and authority to vacate such conviction and sentence.

25 (2) The defendant shall serve the petition provided for under paragraph (1) of this
26 subsection upon the prosecuting attorney, and such petition:

27 (A) Shall be submitted on a form promulgated by the Attorney General;

28 (B) Shall be submitted no earlier than six months following conviction and sentencing
29 for a misdemeanor offense or no earlier than one year following completion of the
30 sentence for a felony offense;

31 (C) Shall be submitted with a copy of his or her criminal history background check
32 report conducted by the Georgia Crime Information Center that has been completed no
33 more than three business days prior to the filing of the petition; provided, however, that
34 the defendant shall not be charged a fee by the Georgia Crime Information Center for
35 a report produced for purposes of this Code section; and

36 (D) May include documentation of a defendant's status as a victim of an offense of
37 trafficking under Code Section 16-5-46 at the time of the offense; provided, however,
38 that official documentation shall not be required to obtain relief under this Code
39 section. Such documentation shall create a rebuttable presumption that the defendant
40 was a victim of trafficking under Code Section 16-5-46. As used in this subparagraph,
41 the term 'official documentation' includes, but is not limited to, the following:

42 (i) A copy of an official record, certification, or eligibility letter from a federal, state,
43 tribal, or local proceeding showing that the defendant was a victim of trafficking
44 under Code Section 16-5-46;

45 (ii) An affidavit, a letter, or sworn testimony from a member of the clergy, medical
46 professional, member of a victim services organization, or certified, licensed, or
47 registered professional from whom the defendant has sought assistance, counseling,
48 or legal counsel related to his or her victimization; or

49 (iii) Any other evidence that the court determines is of sufficient credibility or
50 probative value.

51 (3) No defendant with an outstanding warrant issued by a jurisdiction in this state or any
52 other state or by the United States shall file a petition provided for under paragraph (1)
53 of this subsection.

54 (4) If the prosecuting attorney, to the court, consents in writing to the vacatur of such
55 conviction or fails to respond to such petition within 30 days of service, the court
56 imposing the conviction and sentence shall, without notice or hearing, issue an order
57 vacating the conviction and sentence and shall also issue an order restricting access to
58 criminal history record information for such offense.

59 (5)(A) If the prosecuting attorney, to the court, objects in writing to the petition, the
60 court shall hold a hearing within 90 days of the filing of the petition. The court shall
61 hear evidence and determine, by a preponderance of the evidence, whether the

62 defendant committed such offense as a direct result of being the victim of an offense
 63 of trafficking under Code Section 16-5-46. If the court finds, by a preponderance of the
 64 evidence, that the defendant committed such offense as a direct result of being the
 65 victim of an offense of trafficking under Code Section 16-5-46, the court may issue an
 66 order vacating the conviction and sentence.

67 (B) If such order to vacate is issued, the court shall also issue an order restricting
 68 access to criminal history record information for such offense and no fee shall be
 69 charged by the Georgia Crime Information Center or any other entity for restricting
 70 access to criminal history record information under this paragraph.

71 (C) As used in this paragraph, the term 'restrict' shall have the same meaning as set
 72 forth in Code Section 35-3-37.

73 (b) When the petition provided for under subsection (a) of this Code section is filed, it
 74 shall be filed under seal.

75 (c) For any sentence vacated pursuant to this Code section, any fines and fees paid by the
 76 defendant under such sentence shall be returned to the defendant in the amount paid by the
 77 defendant.

78 (d) For purposes of considering such petition, testimony from the defendant or any other
 79 party may be taken by the court by remote electronic means."

80

SECTION 3.

81 Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the
 82 Georgia Crime Information Center, is amended by adding a new paragraph to subsection (j)
 83 of Code Section 35-3-37, relating to review of individual's criminal history record
 84 information, definitions, privacy considerations, written application requesting review, and
 85 inspection, to read as follows:

86 "(6)(A) A defendant convicted of an offense and sentenced while such individual was
 87 a victim of an offense of trafficking under Code Section 16-5-46 may petition the court
 88 imposing the sentence to restrict such conviction. Such court shall maintain the
 89 jurisdiction, power, and authority to restrict such conviction and sentence.

90 (B) The defendant shall serve the petition provided for under paragraph (1) of this
 91 subsection upon the prosecuting attorney, and such petition:

92 (i) Shall be submitted on a form promulgated by the Attorney General; and

93 (ii) May include documentation of a defendant's status as a victim of an offense of
 94 trafficking under Code Section 16-5-46 at the time of the offense; provided, however,
 95 that official documentation shall not be required to obtain relief under this paragraph.

96 Such documentation shall create a rebuttable presumption that the defendant was a

97 victim of trafficking under Code Section 16-5-46. As used in this subparagraph, the
 98 term 'official documentation' includes, but is not limited to, the following:

99 (I) A copy of an official record, certification, or eligibility letter from a federal,
 100 state, tribal, or local proceeding showing that the defendant was a victim of
 101 trafficking under Code Section 16-5-46;

102 (II) An affidavit, a letter, or sworn testimony from a member of the clergy, medical
 103 professional, member of a victim services organization, or certified, licensed, or
 104 registered professional from whom the defendant has sought assistance, counseling,
 105 or legal counsel related to his or her victimization; or

106 (III) Any other evidence that the court determines is of sufficient credibility or
 107 probative value.

108 (C) If the prosecuting attorney, to the court, consents in writing to the restriction of
 109 such conviction and sentence or fails to respond to such petition within 30 days of
 110 service, the court imposing the conviction and sentence shall, without notice or hearing,
 111 issue an order restricting the conviction and sentence.

112 (D) If the prosecuting attorney, to the court, objects in writing to the petition, the court
 113 shall determine, by a preponderance of the evidence, whether the defendant committed
 114 such offense while such individual was a victim of an offense of trafficking under Code
 115 Section 16-5-46. If the court finds, by a preponderance of the evidence, that the
 116 defendant committed such offense while such individual was a victim of an offense of
 117 trafficking under Code Section 16-5-46, the court may issue an order restricting the
 118 conviction and sentence. The court shall hold a hearing within 90 days of the filing of
 119 the petition to hear evidence for purposes of making a determination under this
 120 subparagraph or make a determination upon the pleadings or record.

121 (E) When the petition provided for under subparagraph (A) of this paragraph is filed,
 122 it shall be filed under seal.

123 (F) For purposes of considering such petition, testimony from the defendant or any
 124 other party may be taken by the court by remote electronic means.

125 (G) No fee shall be charged to an individual for restricting access to criminal history
 126 record information under this paragraph."

127 **SECTION 4.**

128 This Act shall become effective upon its approval by the Governor or upon its becoming law
 129 without such approval.

130 **SECTION 5.**

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