

House Bill 1201

By: Representatives Gaines of the 120th, Smith of the 18th, Jones of the 47th, Silcox of the 53rd, Hong of the 103rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Sections 17-10-21 and 35-3-37 of the Official Code of Georgia Annotated,
2 relating to vacating of sentence for trafficking victim defendants and review of individual's
3 criminal history record information, definitions, privacy considerations, written application
4 requesting review, and inspection, respectively, so as to provide for the vacating of sentences
5 of victims of trafficking sentenced under Article 3 of Chapter 8 of Title 42, relating to first
6 offenders; to provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Code Section 17-10-21 of the Official Code of Georgia Annotated, relating to vacating of
10 sentence for trafficking victim defendants, is amended by revising paragraphs (1), (4), and
11 (5) of subsection (a) as follows:

12 "(1) A defendant convicted of an offense and sentenced, or a defendant who was
13 sentenced pursuant to Code Section 42-8-60 or 16-13-2, as a direct result of the defendant
14 being the victim of an offense of trafficking under Code Section 16-5-46 may petition the
15 court imposing the sentence to vacate such conviction and sentence or the sentence

16 imposed pursuant to Code Section 42-8-60 or 16-13-2. Such court shall maintain the
17 jurisdiction, power, and authority to vacate such conviction and sentence."

18 "(4) If the prosecuting attorney, to the court, consents in writing to the vacatur of such
19 conviction or fails to respond to such petition within 30 days of service, the court
20 imposing the conviction and sentence or the sentence imposed pursuant to Code Section
21 42-8-60 or 16-13-2 shall, without notice or hearing, issue an order vacating the
22 conviction and sentence or the sentence imposed pursuant to Code Section 42-8-60 or
23 16-13-2 and shall also issue an order restricting access to criminal history record
24 information for such offense.

25 (5)(A) If the prosecuting attorney, to the court, objects in writing to the petition, the
26 court shall hold a hearing within 90 days of the filing of the petition. The court shall
27 hear evidence and determine, by a preponderance of the evidence, whether the
28 defendant committed such offense as a direct result of being the victim of an offense
29 of trafficking under Code Section 16-5-46. If the court finds, by a preponderance of
30 the evidence, that the defendant committed such offense as a direct result of being the
31 victim of an offense of trafficking under Code Section 16-5-46, the court may issue
32 an order vacating the conviction and sentence or the sentence imposed pursuant to
33 Code Section 42-8-60 or 16-13-2. The vacatur of a sentence under this paragraph
34 which was imposed pursuant to Code Section 42-8-60 or 16-13-2 shall result in the
35 discharge and dismissal of the action.

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

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

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SECTION 2.

43 Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to review of
44 individual's criminal history record information, definitions, privacy considerations, written
45 application requesting review, and inspection, is amended by revising paragraph (6) of
46 subsection (j) as follows:

47 "(6)(A) A defendant convicted of an offense and sentenced, or a defendant who was
48 sentenced pursuant to Code Section 42-8-60 or 16-13-2, while such individual was a
49 victim of an offense of trafficking under Code Section 16-5-46 may petition the court
50 imposing the sentence to restrict such conviction and the sentence or sentence imposed
51 pursuant to Code Section 42-8-60 or 16-13-2. Such court shall maintain the
52 jurisdiction, power, and authority to restrict such conviction and sentence.

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

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

56 (ii) May include documentation of a defendant's status as a victim of an offense of
57 trafficking under Code Section 16-5-46 at the time of the offense; provided, however,
58 that official documentation shall not be required to obtain relief under this paragraph.
59 Such documentation shall create a rebuttable presumption that the defendant was a
60 victim of trafficking under Code Section 16-5-46. As used in this subparagraph, the
61 term 'official documentation' includes, but is not limited to, the following:

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

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

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

71 (C) If the prosecuting attorney, to the court, consents in writing to the restriction of
72 such conviction and sentence or the sentence imposed pursuant to Code Section
73 42-8-60 or 16-13-2 or fails to respond to such petition within 30 days of service, the
74 court imposing the conviction and sentence or the sentence imposed pursuant to Code
75 Section 42-8-60 or 16-13-2 shall, without notice or hearing, issue an order restricting
76 ~~the conviction and sentence~~ access to criminal history record information for such
77 offense.

78 (D) If the prosecuting attorney, to the court, objects in writing to the petition, the court
79 shall determine, by a preponderance of the evidence, whether the defendant committed
80 such offense while such individual was a victim of an offense of trafficking under Code
81 Section 16-5-46. If the court finds, by a preponderance of the evidence, that the
82 defendant committed such offense while such individual was a victim of an offense of
83 trafficking under Code Section 16-5-46, the court may issue an order restricting ~~the~~
84 ~~conviction and sentence~~ access to criminal history record information for such offense.
85 The court shall hold a hearing within 90 days of the filing of the petition to hear
86 evidence for purposes of making a determination under this subparagraph or make a
87 determination upon the pleadings or record.

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

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

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

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SECTION 3.

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