

The Senate Committee on Judiciary offered the following substitute to HB 1201:

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 15, 17, 35, and 49 of the Official Code of Georgia Annotated, relating to
2 courts, criminal procedure, law enforcement officers and agencies, and social services,
3 respectively, so as to provide for certain services and protections for victims of trafficking;
4 to provide for definitions; to provide for the vacating of certain sentences of victims of
5 trafficking sentenced under Article 3 of Chapter 8 of Title 42, relating to first offenders; to
6 provide for related matters; to provide for an effective date; to repeal conflicting laws; and
7 for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended in Code
11 Section 15-11-2, relating to definitions relative to the juvenile code, by adding a new
12 paragraph to read as follows:

13 “(13.05) 'Commercial sexual exploitation recovery center' means a child-caring
14 institution certified as a victim assistance program, as provided for in subsection (e) of
15 Code Section 15-21-132, which provides full-time residential care and support services

16 to youth through 18 years of age who are victims of sexual exploitation as defined in
17 Code Section 49-5-40."

18 **SECTION 2.**

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

22 "(1) A defendant convicted of an offense and sentenced, or a defendant who was
23 sentenced pursuant to Code Section 42-8-60 or 16-13-2, as a direct result of the defendant
24 being the victim of an offense of trafficking under Code Section 16-5-46 may petition the
25 court imposing the sentence to vacate such conviction and sentence or the sentence
26 imposed pursuant to Code Section 42-8-60 or 16-13-2. Such court shall maintain the
27 jurisdiction, power, and authority to vacate such conviction and sentence."

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

35 (5)(A) If the prosecuting attorney, to the court, objects in writing to the petition, the
36 court shall hold a hearing within 90 days of the filing of the petition. The court shall
37 hear evidence and determine, by a preponderance of the evidence, whether the
38 defendant committed such offense as a direct result of being the victim of an offense
39 of trafficking under Code Section 16-5-46. If the court finds, by a preponderance of the
40 evidence, that the defendant committed such offense as a direct result of being the
41 victim of an offense of trafficking under Code Section 16-5-46, the court may issue an

42 order vacating the conviction and sentence or the sentence imposed pursuant to Code
43 Section 42-8-60 or 16-13-2. The vacatur of a sentence under this paragraph which was
44 imposed pursuant to Code Section 42-8-60 or 16-13-2 shall result in the discharge and
45 dismissal of the action.

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

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

52

SECTION 3.

53 Title 35 of the Official Code of Georgia Annotated, relating law enforcement officers and
54 agencies, is amended in Code Section 35-3-37, relating to review of individual's criminal
55 history record information, definitions, privacy considerations, written application requesting
56 review, and inspection, by revising paragraph (6) of subsection (j) as follows:

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

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

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

66 (ii) May include documentation of a defendant's status as a victim of an offense of
67 trafficking under Code Section 16-5-46 at the time of the offense; provided, however,

68 that official documentation shall not be required to obtain relief under this paragraph.
69 Such documentation shall create a rebuttable presumption that the defendant was a
70 victim of trafficking under Code Section 16-5-46. As used in this subparagraph, the
71 term 'official documentation' includes, but is not limited to, the following:

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

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

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

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

88 (D) If the prosecuting attorney, to the court, objects in writing to the petition, the court
89 shall determine, by a preponderance of the evidence, whether the defendant committed
90 such offense while such individual was a victim of an offense of trafficking under Code
91 Section 16-5-46. If the court finds, by a preponderance of the evidence, that the
92 defendant committed such offense while such individual was a victim of an offense of
93 trafficking under Code Section 16-5-46, the court may issue an order restricting ~~the~~
94 ~~conviction and sentence~~ access to criminal history record information for such offense.

95 The court shall hold a hearing within 90 days of the filing of the petition to hear
96 evidence for purposes of making a determination under this subparagraph or make a
97 determination upon the pleadings or record.

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

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

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

104 **SECTION 4.**

105 Title 49 of the Official Code of Georgia Annotated, relating to social services, is amended
106 in Code Section 49-5-3, relating to definitions relative to children and youth services, by
107 revising paragraphs (3) and (13) and by adding new paragraph to read as follows:

108 "(3) 'Child-caring institution' means any institution, society, agency, or facility, whether
109 incorporated or not, which either primarily or incidentally provides full-time care for
110 children through 18 years of age outside of their own homes, subject to such exceptions
111 as may be provided in rules and regulations of the board. Such term includes a
112 commercial sexual exploitation recovery center."

113 “(6.1) 'Commercial sexual exploitation recovery center' means a child-caring institution
114 certified as a victim assistance program, as provided for in subsection (e) of Code
115 Section 15-21-132, which provides full-time residential care and support services to
116 youth through 18 years of age who are victims of sexual exploitation as defined in Code
117 Section 49-5-40."

118 "(13) 'Maternity home' means any place in which any person, society, agency,
119 corporation, or facility receives, treats, or cares for, within any six-month period, more
120 than one pregnant woman whose child is to be born out of wedlock, either before, during,

121 or within two weeks after childbirth. This definition shall not include women who
122 receive maternity care in the home of a relative or in general or special hospitals, licensed
123 according to law, in which maternity treatment and care is part of the medical services
124 performed and the care of children is only brief and incidental. Such term shall not
125 include a commercial sexual exploitation recovery center."

126 **SECTION 5.**

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

129 **SECTION 6.**

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