

The Senate Committee on Judiciary offers the following substitute to HB 17:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 3 of Title 9 and Article 2 of Chapter 5 of Title 49 of the Official Code of  
2 Georgia Annotated, relating to limitations of actions and child abuse and deprivation records,  
3 respectively, so as to extend the statute of limitations for actions for childhood sexual abuse  
4 under certain circumstances; to provide for retroactive claims for childhood sexual abuse  
5 under certain circumstances; to provide for limitations of liability for certain legal entities;  
6 to change provisions relating to tolling of limitations for a minor's cause of action; to change  
7 provisions relating to the tolling of limitations for tort actions while criminal prosecution is  
8 pending; to change provisions relating to the confidentiality and use of certain records; to  
9 provide for a short title; to provide for related matters; to provide for an effective date; to  
10 repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

12 This Act shall be known and may be cited as the "Hidden Predator Act."  
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**SECTION 2.**

14 Chapter 3 of Title 9 of the Official Code of Georgia Annotated, relating to limitations of  
15 actions, is amended by revising Code Section 9-3-33.1, relating to limitations for actions for  
16 childhood sexual abuse, as follows:  
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18 "9-3-33.1.

19 (a)(1) As used in this ~~Code section~~ subsection, the term 'childhood sexual abuse' means  
20 any act committed by the defendant against the plaintiff which act occurred when the  
21 plaintiff was under ~~the age of 18 years~~ of age and which act would ~~have been proscribed~~  
22 ~~by Code Section 16-6-1, relating to rape; Code Section 16-6-2, relating to sodomy and~~  
23 ~~aggravated sodomy; Code Section 16-6-3, relating to statutory rape; Code Section 16-6-4,~~  
24 ~~relating to child molestation and aggravated child molestation; Code Section 16-6-5,~~  
25 ~~relating to enticing a child for indecent purposes; Code Section 16-6-12, relating to~~

26 ~~pandering, Code Section 16-6-14, relating to pandering by compulsion; Code Section~~  
 27 ~~16-6-15, relating to solicitation of sodomy; Code Section 16-6-22, relating to incest; Code~~  
 28 ~~Section 16-6-22.1, relating to sexual battery, or Code Section 16-6-22.2, relating to~~  
 29 ~~aggravated sexual battery, or any prior laws of this state of similar effect which were in~~  
 30 ~~effect at the time the act was committed be in violation of:~~

- 31 (A) Rape, as prohibited in Code Section 16-6-1;
- 32 (B) Sodomy or aggravated sodomy, as prohibited in Code Section 16-6-2;
- 33 (C) Statutory rape, as prohibited in Code Section 16-6-3;
- 34 (D) Child molestation or aggravated child molestation, as prohibited in Code Section  
 35 16-6-4;
- 36 (E) Enticing a child for indecent purposes, as prohibited in Code Section 16-6-5;
- 37 (F) Pandering, as prohibited in Code Section 16-6-12;
- 38 (G) Pandering by compulsion, as prohibited in Code Section 16-6-14;
- 39 (H) Solicitation of sodomy, as prohibited in Code Section 16-6-15;
- 40 (I) Incest, as prohibited in Code Section 16-6-22;
- 41 (J) Sexual battery, as prohibited in Code Section 16-6-22.1; or
- 42 (K) Aggravated sexual battery, as prohibited in Code Section 16-6-22.2.

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

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

- 50 (A) Trafficking a person for sexual servitude, as prohibited in Code Section 16-5-46;
- 51 (B) Rape, as prohibited in Code Section 16-6-1;
- 52 (C) Statutory rape, as prohibited in Code Section 16-6-3, if the defendant was 21 years  
 53 of age or older at the time of the act;
- 54 (D) Aggravated sodomy, as prohibited in Code Section 16-6-2;
- 55 (E) Child molestation or aggravated child molestation, as prohibited in Code Section  
 56 16-6-4, unless the violation would be subject to punishment as provided in paragraph  
 57 (2) of subsection (b) of Code Section 16-6-4 or paragraph (2) of subsection (d) of Code  
 58 Section 16-6-4;
- 59 (F) Enticing a child for indecent purposes, as prohibited in Code Section 16-6-5, unless  
 60 the violation would be subject to punishment as provided in subsection (c) of Code  
 61 Section 16-6-5;
- 62 (G) Incest, as prohibited in Code Section 16-6-22;

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

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

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

68 (i) On or before the date the plaintiff attains the age of 23 years; or

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

72 (B) When a plaintiff's civil action is filed after the plaintiff attains the age of 23 years  
73 but within two years from the date that the plaintiff knew or had reason to know of such  
74 abuse and that such abuse resulted in injury to the plaintiff, the court shall determine  
75 from admissible evidence in a pretrial finding when the discovery of the alleged  
76 childhood sexual abuse occurred. The pretrial finding required under this subparagraph  
77 shall be made within six months of the filing of the civil action.

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

79 (A) 'Clear and convincing evidence' means proof that will produce in the mind of the  
80 trier of facts a firm belief or conviction as to the allegations sought to be established;  
81 it is intermediate, being more than a mere preponderance, but does not require the  
82 degree of certainty as does the standard of beyond a reasonable doubt.

83 (B) 'Entity' means an institution, agency, firm, business, corporation, or other public  
84 or private legal entity.

85 (C) 'Person' means the individual alleged to have committed the act of childhood  
86 sexual abuse.

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

94 (3) If a civil action for recovery of damages suffered as a result of childhood sexual  
95 abuse is commenced pursuant to division (b)(2)(A)(ii) of this Code section and if the  
96 person was a volunteer or employee of an entity that owed a duty of care to the plaintiff,  
97 or the person and the plaintiff were engaged in some activity over which such entity had  
98 control, damages against such entity shall be awarded under this Code section only if by  
99 clear and convincing evidence there is a finding that:

- 100 (A) The entity knew or should have known of the alleged conduct giving rise to the  
 101 civil action;
- 102 (B) Such entity failed to take reasonable remedial measures; and
- 103 (C) There was negligence on the part of such entity.
- 104 (d)(1) For a period of two years following July 1, 2015, plaintiffs of any age who were  
 105 time barred from filing a civil action for injuries resulting from childhood sexual abuse  
 106 due to the expiration of the statute of limitations in effect on June 30, 2015, shall be  
 107 permitted to file such actions against the individual alleged to have committed such abuse  
 108 before July 1, 2017, thereby reviving those civil actions which had lapsed or technically  
 109 expired under the law in effect on June 30, 2015.
- 110 (2) The revival of a claim as provided in paragraph (1) of this subsection shall not apply  
 111 to:
- 112 (A) Any claim that has been litigated to finality on the merits in a court of competent  
 113 jurisdiction prior to July 1, 2015. Termination of a prior civil action on the basis of the  
 114 expiration of the statute of limitations shall not constitute a claim that has been litigated  
 115 to finality on the merits;
- 116 (B) Any written settlement agreement which has been entered into between a plaintiff  
 117 and a defendant when the plaintiff was represented by an attorney who was admitted  
 118 to practice law in this state at the time of the settlement, and the plaintiff signed such  
 119 agreement; and
- 120 (C) Any claim against an entity, as such term is defined in subsection (c) of this Code  
 121 section.
- 122 (3) This subsection shall be repealed effective July 1, 2017."

123 **SECTION 3.**

124 Said chapter is further amended by revising Code Section 9-3-90, relating to persons under  
 125 disability or imprisoned when cause of actions accrues, as follows:

126 "9-3-90.

127 (a) Individuals ~~Minors and persons~~ who are legally incompetent because of mental  
 128 retardation or mental illness, who are such when the cause of action accrues, shall be  
 129 entitled to the same time after their disability is removed to bring an action as is prescribed  
 130 for other persons.

131 (b) Except as otherwise provided in Code Section 9-3-33.1, individuals who are less than  
 132 18 years of age when a cause of action accrues shall be entitled to the same time after he  
 133 or she reaches the age of 18 years to bring an action as is prescribed for other persons.

134 ~~(b)~~(c) No action accruing to a ~~person~~ an individual imprisoned at the time of its accrual  
 135 which, ~~prior:~~

136 (1) Prior to July 1, 1984, has been barred by the provisions of this chapter ~~relating to~~  
 137 ~~limitations of actions~~ shall be revived by this chapter, as amended. ~~No action accruing~~  
 138 ~~to a person imprisoned at the time of its accrual which would; or~~  
 139 (2) Would be barred before July 1, 1984, by the provisions of this chapter, as amended,  
 140 but which would not be so barred by the provisions of this chapter in force immediately  
 141 prior to July 1, 1984, shall be barred until July 1, 1985."

142 **SECTION 4.**

143 Said chapter is further amended by revising Code Section 9-3-99, relating to tolling of  
 144 limitations for tort actions while criminal prosecution is pending, as follows:

145 "9-3-99.

146 The running of the period of limitations with respect to any cause of action in tort that may  
 147 be brought by the victim of an alleged crime which arises out of the facts and  
 148 circumstances relating to the commission of such alleged crime committed in this state  
 149 shall be tolled from the date of the commission of the alleged crime or the act giving rise  
 150 to such action in tort until the prosecution of such crime or act has become final or  
 151 otherwise terminated, provided that such time does not exceed six years, except as  
 152 otherwise provided in Code Section 9-3-33.1."

153 **SECTION 5.**

154 Article 2 of Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to child  
 155 abuse and deprivation records, is amended in Code Section 49-5-41, relating to persons and  
 156 agencies permitted access to records, by adding a new subsection to read as follows:

157 "(f) Notwithstanding Code Section 49-5-40, a child who alleges that he or she was abused  
 158 shall be permitted access to records concerning a report of child abuse allegedly committed  
 159 against him or her which are in the custody of the department or other state or local agency  
 160 when he or she reaches 18 years of age; provided, however, that prior to such child  
 161 reaching 18 years of age, if the requestor is not the subject of such report, such reports shall  
 162 be made available to such child's parent or legal guardian or a deceased child's duly  
 163 appointed representative when the requestor or his or her attorney submits a sworn affidavit  
 164 that attests that such information is relevant to a pending or proposed civil action; and  
 165 provided, further, that such reports shall still be subject to confidentiality pursuant to  
 166 paragraph (4) of subsection (a) of Code Section 50-18-72."

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**SECTION 6.**

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Said article is further amended by revising subsection (c) of Code Section 49-5-44, relating to penalties for unauthorized access to records and use of records in public and criminal proceedings, as follows:

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"(c) Records made confidential by Code Section 49-5-40 and information obtained from such records ~~may~~ shall not be made a part of any record which is open to the public except that:

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(1) A a district attorney may use and make public that record or information in the course of any criminal prosecution for any offense which constitutes or results from child abuse;

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and

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(2) The parties in a civil action may use and make public that record or information in the course of a civil action for childhood sexual abuse, as such term is defined in Code

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Section 9-3-33.1."

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**SECTION 7.**

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This Act shall become effective on July 1, 2015.

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**SECTION 8.**

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