

The Senate Committee on Public Safety offered the following substitute to HB 959:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 21 of Title 15 of the Official Code of Georgia Annotated, relating to
2 payment and disposition of fines and forfeitures, so as to create the Victims of Human
3 Trafficking Fund and the Victims of Human Trafficking Fund Commission; to provide for
4 definitions; to provide for appointment of members of the commission and personnel; to
5 provide for duties of the commission and allow for expenses; to provide for
6 recommendations of changes in state programs, laws, and policies; to provide for acceptance
7 of federal funds and individual donations; to provide for fines and penalties; to provide for
8 collection of fines and disposition of moneys collected; to provide for a duty to collect; to
9 provide for a cause of action and forfeiture; to amend Code Section 16-6-13.3 of the Official
10 Code of Georgia Annotated, relating to civil forfeiture of proceeds and property, so as to
11 provide for the forfeiture of proceeds or money which is used, intended for use, used in any
12 manner to facilitate, or derived from the criminal offense of trafficking of persons for labor
13 or sexual servitude; to amend Title 16 of the Official Code of Georgia Annotated, relating
14 to crimes and offenses, so as to provide for a required human trafficking training program
15 for hotels; to provide for definitions; to provide for retraining; to provide that the provisions
16 of Code Section 16-6-16, relating to masturbation for hire, shall be applicable only to persons
17 above a certain age; to amend Code Sections 17-10-21 and 35-3-37 of the Official Code of
18 Georgia Annotated, relating to vacating of sentence for trafficking victim defendants and

19 review of individual's criminal history record information, definitions, privacy
20 considerations, written application requesting review, and inspection, respectively, so as to
21 authorize certain relief for defendants conditionally discharged for possession of controlled
22 substances or sentenced as a first offender; to provide for related matters; to provide for a
23 contingent effective date and automatic repeal; to repeal conflicting laws; and for other
24 purposes.

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

26 **PART I**
27 **SECTION 1-1.**

28 Chapter 21 of Title 15 of the Official Code of Georgia Annotated, relating to payment and
29 disposition of fines and forfeitures, is amended by adding a new article to read as follows:

30 "ARTICLE 12

31 15-21-220.

32 This article is enacted pursuant to Article III, Section IX, Paragraph VI(o) of the
33 Constitution, which provision authorizes additional penalty assessments for violations
34 relating to certain sexual crimes and provides that the proceeds derived therefrom may be
35 used for the purpose of meeting the costs of care and rehabilitative and social services for
36 certain individuals in this state who have been sexually exploited.

37 15-21-221.

38 As used in this article, the term:

39 (1) 'Commission' means the Victims of Human Trafficking Fund Commission.

(2) 'Fund' means the Victims of Human Trafficking Fund.

(3) 'Safe house' means a licensed residential facility that provides safe and secure shelter.

(4) 'Sexually explicit conduct' shall have the same meaning as set forth in Code Section 16-12-100.

(5) 'Sexually exploited victim' means a person who:

(A) Has been the victim of trafficking of persons for sexual servitude in violation of Code Section 16-5-46;

(B) Has engaged in sodomy, prostitution, solicitation of sodomy, or masturbation for hire; or

(C) Has been the victim of sexually explicit conduct for the purpose of producing any print or visual medium.

(6) 'Visual medium' shall have the same meaning as set forth in Code Section 16-12-100.

15-21-222.

(a) There is established the Victims of Human Trafficking Fund Commission which is assigned to the Division of Family and Children Services of the Department of Human Resources for administrative purposes only, as prescribed in Code Section 50-4-3.

(b) There is created the Victims of Human Trafficking Fund as a separate fund in the state treasury. The state treasurer shall credit to the fund all amounts transferred to the fund and shall invest the fund moneys in the same manner as authorized for investing other moneys in the state treasury.

(c) The commission may authorize the disbursement of available money from the fund, after appropriation thereof, for purposes of providing care, rehabilitative services, residential housing, health services, and social services, including establishing safe houses, to sexually exploited victims and to a person, entity, or program eligible pursuant to criteria to be set by the commission. The commission shall also consider disbursement of available money from the fund to a person, entity, or program devoted to awareness and prevention

of becoming a sexually exploited victim. The commission may also authorize the disbursement of fund money for the actual and necessary operating expenses that the commission incurs in performing its duties; provided, however, that such disbursements shall be kept at a minimum in furtherance of the primary purpose of the fund, which is to disburse money to provide care and rehabilitative and social services to sexually exploited victims.

15-21-223.

(a) The commission shall consist of six members. Five of the members shall serve for terms of two years, except that, with respect to the first members appointed, two members shall be appointed for terms of three years, two members for terms of two years, and one member for a term of one year. The director of the Division of Family and Children Services of the Department of Human Services shall be a permanent member of the commission. The chairperson of the Criminal Justice Coordinating Council, the commissioner of behavioral health and developmental disabilities, the director of the Division of Family and Children Services of the Department of Human Services, the President of the Senate, and the Speaker of the House of Representatives shall each appoint one member of the commission. The appointees of the President of the Senate and the Speaker of the House of Representatives shall both be advocates for victims of human trafficking. The Governor shall establish initial terms of office for all members of the commission within the limitations of this subsection.

(b) In the event of death, resignation, disqualification, or removal for any reason of any member of the commission, the vacancy shall be filled in the same manner as the original appointment, and the successor shall serve for the unexpired term.

(c) Membership on the commission shall not constitute public office, and no member shall be disqualified from holding public office by reason of his or her membership.

(d) The Governor shall designate a chairperson of the commission from among the members, which chairperson shall serve in that position at the pleasure of the Governor.

The commission may elect such other officers and committees as it considers appropriate.

(e) The commission, with the approval of the Governor, may employ such professional, technical, or clerical personnel as deemed necessary to carry out the purposes of this article.

15-21-224.

Members of the commission shall serve without compensation but shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member of the commission is in attendance at a meeting of such commission, plus either reimbursement for actual transportation costs while traveling by public carrier or the same mileage allowance for use of a personal car in connection with such attendance as members of the General Assembly receive. Such expense and travel allowance shall be paid in lieu of any per diem, allowance, or other remuneration now received by any such member for such attendance. Expense allowances and other costs authorized in this Code section shall be paid from moneys in the fund.

15-21-225.

(a) The commission shall:

(1) Meet at such times and places as it shall determine necessary or convenient to perform its duties on the call of the chairperson or the Governor;

(2) Maintain minutes of its meetings;

(3) Adopt rules and regulations for the transaction of its business;

(4) Accept applications for disbursements of available money from the fund;

(5) Develop a state-wide protocol for helping to coordinate the delivery of services to sexually exploited victims;

116 (6) Provide oversight and accountability for any program that receives disbursements
117 from the fund;

118 (7) Maintain records of all its expenditures, funds received as gifts and donations, and
119 disbursements made from the fund; and

120 (8) Conform to the standards and requirements prescribed by the state accounting officer
121 pursuant to Chapter 5B of Title 50.

122 (b) The commission shall utilize existing state resources and staff of participating
123 departments whenever practicable.

124 15-21-226.

125 The commission may recommend to the Governor and the General Assembly changes in
126 state programs, laws, policies, budgets, and standards relating to the care and rehabilitation
127 of sexually exploited victims, changes to improve coordination among state agencies that
128 provide care and rehabilitative and social services to sexually exploited victims, and
129 changes to improve the condition of sexually exploited victims who are in need of
130 rehabilitative and social services.

131 15-21-227.

132 The commission may accept and solicit federal funds granted by Congress or executive
133 order for the purposes of this article as well as gifts and donations from individuals, private
134 organizations, or foundations. The acceptance and use of federal funds shall not commit
135 state funds and shall not place an obligation upon the General Assembly to continue the
136 purposes for which the federal funds are made available. All such funds received in the
137 manner described in this Code section shall be transmitted to the state treasurer for deposit
138 into the fund to be disbursed as other moneys in the fund.

15-21-228.

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

(b) The penalty provided for in subsection (a) of this Code section shall be in addition to any amount required to be paid into any pension, annuity, or retirement fund under Title 47 or any other law and in addition to any other amounts provided for in this chapter.

(c) The penalty provided for in subsection (a) of this Code section shall be assessed and collected by the clerk or court officer charged with the duty of collecting moneys arising from fines and shall be paid over by the last day of the following month to the Georgia Superior Court Clerks' Cooperative Authority for remittance to the Victims of Human Trafficking Fund Commission, to be deposited into the Victims of Human Trafficking Fund.

(d) Any person whose duty it is to collect and remit the penalty provided for in subsection (a) of this Code section who intentionally refuses to so remit shall be guilty of a misdemeanor.

(e)(1) In addition to the costs and fees assessed in subsections (a) through (c) of this Code section, an individual who is a victim of a violation of Code Section 16-5-46 shall have a cause of action against any perpetrator and may recover damages and reasonable attorney's fees.

(2) Upon a conviction of any of the offenses provided in subsection (a) of this Code section, any real or personal property which is, directly or indirectly, used or intended for use in any manner to facilitate such offense is declared to be contraband and subject to forfeiture in accordance with the procedures set forth in Chapter 16 of Title 9."

SECTION 1-2.

Code Section 16-6-13.3 of the Official Code of Georgia Annotated, relating to civil forfeiture of proceeds and property, is amended by revising subsection (b) as follows:

"(b) Any property which is, directly or indirectly, used or intended for use in any manner to facilitate a violation of Code Section 16-6-10, 16-6-11, ~~or~~ 16-6-12, or 16-5-46 and any proceeds are declared to be contraband and no person shall have a property right in them."

PART II**SECTION 2-1.**

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended by revising Article 3 of Chapter 5, relating to kidnapping, false imprisonment, and related offenses, by adding a new Code section to read as follows:

"16-5-48.

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

(1) 'Employee' means any person employed by an innkeeper that:

(A) Has frequent or regular interactions with guests, such as front desk staff, porters, concierges, restaurant waiting and bartending staff, room service staff, and temporary employees;

(B) Is in a management position; or

(C) Has access to the guests' rooms, including housekeeping staff.

(2) 'Innkeeper' means:

(A) Any person that furnishes for value to the public any room or rooms, lodgings, or accommodations in a county or municipality and that is licensed by, or required to pay business or occupation taxes to, such municipality or county for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which any room or rooms, lodgings, or accommodations are regularly furnished for value; or

190 (B) A marketplace innkeeper.

191 (3) 'Marketplace innkeeper' means a dealer as defined in subparagraph (M.3) of
192 paragraph (8) of Code Section 48-8-2 that is required to collect and remit the tax imposed
193 by Article 1 of Chapter 8 of Title 48 for acting as a marketplace facilitator as such term
194 is defined in paragraph (18.1) of Code Section 48-8-2 for facilitating the furnishing for
195 value to the public any room or rooms, lodgings, or accommodations on behalf of another
196 person.

197 (b) Every innkeeper shall require its employees to complete a training course on
198 recognizing and reporting instances of suspected human trafficking. Such training course
199 shall be an online course provided by the Criminal Justice Coordinating Council at no cost
200 to the innkeeper nor employees or an alternative online or in-person training course
201 approved by the Criminal Justice Coordinating Council. The Criminal Justice
202 Coordinating Council shall approve or deny the use of any alternative online or in-person
203 training course within 60 days of the submission of such training course for approval.

204 (c) Each employee of an innkeeper shall complete the required training course described
205 in subsection (b) of this Code section within six months of being employed by an innkeeper
206 and thereafter at least once during each consecutive period of two calendar years,
207 commencing with the date on which he or she last completed the required training course,
208 for as long as he or she is employed by an innkeeper.

209 (d) An owner, operator, or employee of a public lodging establishment who complies in
210 good faith with this Code section shall not be liable for any act or omission arising out of
211 or related to human trafficking committed by a third party unless the owner, operator, or
212 employee of the public lodging establishment knowingly assists the commission of human
213 trafficking."

SECTION 2-2.

Said title is further amended by revising Code Section 16-6-16, relating to masturbation for hire, as follows:

"16-6-16.

(a) A person 18 years of age or older, including a masseur or masseuse, commits the offense of masturbation for hire when he or she erotically stimulates the genital organs of another, whether resulting in orgasm or not, by manual or other bodily contact exclusive of sexual intercourse or by instrumental manipulation for money or the substantial equivalent thereof.

(b) A person committing the offense of masturbation for hire shall be guilty of a misdemeanor."

PART III**SECTION 3-1.**

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

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

"(4) If the prosecuting attorney, to the court, consents in writing to the vacatur of such conviction or fails to respond to such petition within 30 days of service, the court imposing the conviction and sentence or sentence imposed pursuant to Code Section

239 42-8-60 or 16-13-2 shall, without notice or hearing, issue an order vacating the conviction
240 and sentence and shall also issue an order restricting access to criminal history record
241 information for such offense.

242 (5)(A) If the prosecuting attorney, to the court, objects in writing to the petition, the
243 court shall hold a hearing within 90 days of the filing of the petition. The court shall
244 hear evidence and determine, by a preponderance of the evidence, whether the
245 defendant committed such offense as a direct result of being the victim of an offense
246 of trafficking under Code Section 16-5-46. If the court finds, by a preponderance of the
247 evidence, that the defendant committed such offense as a direct result of being the
248 victim of an offense of trafficking under Code Section 16-5-46, the court may issue an
249 order vacating the conviction and sentence or sentence imposed pursuant to Code
250 Section 42-8-60 or 16-13-2. The vacatur of a sentence under this chapter or a sentence
251 imposed pursuant to Code Section 42-8-60 or 16-13-2 shall result in the discharge and
252 dismissal of the action."

253 SECTION 3-2.

254 Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to review of
255 individual's criminal history record information, definitions, privacy considerations, written
256 application requesting review, and inspection, is amended by revising subparagraphs (A),
257 (C), and (D) of paragraph (6) of subsection (j) as follows:

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

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

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

PART IV

SECTION 4-1.

(a) Except as provided in subsection (b) of this section, this Act shall become effective on July 1, 2024.

(b) Section 1-1 of this Act shall become effective on July 1, 2025, provided that a constitutional amendment is passed by the General Assembly and is ratified by the voters in the November, 2024, General Election amending the Constitution of Georgia to authorize the General Assembly to provide specific funding to the Victims of Human Trafficking Fund.

288 If such an amendment to the Constitution of Georgia is not so ratified, Section 1-1 of this Act
289 shall not become effective and shall stand repealed by operation of law on January 1, 2025.

290 **SECTION 4-2.**

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