

House Bill 200 (AS PASSED HOUSE AND SENATE)

By: Representatives Lindsey of the 54th, Golick of the 34th, Houston of the 170th, Oliver of the 83rd, Willard of the 49th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 16, 17, and 35 of the Official Code of Georgia Annotated, relating to crimes
2 and offenses, criminal procedure, and law enforcement, respectively, so as to discourage
3 trafficking of persons for labor or sexual servitude and provide greater protections to persons
4 subject to such crimes; to increase the penalties for trafficking of persons for labor or sexual
5 servitude; to change provisions relating to trafficking of persons for labor or sexual servitude;
6 to provide that certain facts or circumstances shall not constitute a defense to the crime of
7 trafficking of persons for labor or sexual servitude; to increase penalties for the crimes of
8 keeping a place of prostitution, pimping, and pandering when the crimes involve certain
9 youth; to provide for definitions; to provide for an affirmative defense to certain sexual
10 crimes under certain circumstances; to change provisions relating to compensation from the
11 Georgia Crime Victims Compensation Board; to provide for notification of federal assistance
12 for certain persons under the Crime Victims' Bill of Rights; to provide for training for law
13 enforcement investigating crimes involving trafficking persons for labor or sexual servitude;
14 to provide that the Georgia Bureau of Investigation shall have the duty to investigate
15 violations of Code Section 16-5-46 and shall have subpoena power under certain
16 circumstances; to provide for related matters; to repeal conflicting laws; and for other
17 purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

19 style="text-align:center">**SECTION 1.**

20 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offense, is
21 amended by revising Code Section 16-5-46, relating to trafficking of persons for labor or
22 sexual servitude, as follows:

23 "16-5-46.

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

25 (1) 'Coercion' means:

- 26 (A) Causing or threatening to cause bodily harm to any person, physically restraining
 27 or confining any person, or threatening to physically restrain or confine any person;
 28 (B) Exposing or threatening to expose any fact or information or disseminating or
 29 threatening to disseminate any fact or information that if revealed would tend to subject
 30 a person to criminal or immigration proceedings, hatred, contempt, or ridicule;
 31 (C) Destroying, concealing, removing, confiscating, or possessing any actual or
 32 purported passport or other immigration document, or any other actual or purported
 33 government identification document, of any person; ~~or~~
 34 (D) Providing a controlled substance, as such term is defined by Code Section
 35 16-13-21, to such person for the purpose of compelling such person to engage in labor
 36 or sexual servitude against his or her will; or
 37 (E) Causing or threatening to cause financial harm to any person or using financial
 38 control over any person.

39 (2) 'Deception' means:

- 40 (A) Creating or confirming another's impression of an existing fact or past event which
 41 is false and which the accused knows or believes to be false;
 42 (B) Maintaining the status or condition of a person arising from a pledge by that person
 43 of his or her personal services as security for a debt, if the value of those services as
 44 reasonably assessed is not applied toward the liquidation of the debt or the length and
 45 nature of those services are not respectively limited and defined, or preventing a person
 46 from acquiring information pertinent to the disposition of such debt; or
 47 (C) Promising benefits or the performance of services which the accused does not
 48 intend to deliver or perform or knows will not be delivered or performed. Evidence of
 49 failure to deliver benefits or perform services standing alone shall not be sufficient to
 50 authorize a conviction under this Code section.

51 (3) 'Labor servitude' means work or service of economic or financial value which is
 52 performed or provided by another person and is induced or obtained by coercion or
 53 deception.

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

55 (5) 'Sexually explicit conduct' shall have the same meaning as set forth in Code Section
 56 16-12-100.

57 ~~(4)~~(6) 'Sexual servitude' means:

- 58 (A) Any sexually explicit conduct ~~as defined in paragraph (4) of subsection (a) of Code~~
 59 ~~Section 16-12-100~~ or performance involving sexually explicit conduct for which
 60 anything of value is directly or indirectly given, promised to, or received by any person,
 61 which conduct is induced or obtained by coercion or deception or which conduct is
 62 induced or obtained from a person under the age of 18 years; or

63 (B) Any sexually explicit conduct as defined in paragraph (4) of subsection (a) of Code
 64 ~~Section 16-12-100~~ or performance involving sexually explicit conduct which is
 65 performed or provided by any person, which conduct is induced or obtained by
 66 coercion or deception or which conduct is induced or obtained from a person under the
 67 age of 18 years.

68 (b) A person commits the offense of trafficking a person for labor servitude when that
 69 person knowingly subjects another person to or maintains another person in labor servitude
 70 or knowingly recruits, entices, harbors, transports, provides, or obtains by any means
 71 another person for the purpose of labor servitude.

72 (c) A person commits the offense of trafficking a person for sexual servitude when that
 73 person knowingly subjects another person to or maintains another person in sexual
 74 servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any
 75 means another person for the purpose of sexual servitude.

76 (d) The age of consent for sexual activity or the accused's lack of knowledge of the age of
 77 the person being trafficked shall not constitute a defense in a prosecution for a violation of
 78 this Code section.

79 (e) The sexual history or history of commercial sexual activity of a person alleged to have
 80 been trafficked or such person's connection by blood or marriage to an accused in the case
 81 or to anyone involved in such person's trafficking shall be excluded from evidence if the
 82 court finds at a hearing outside the presence of the jury that the probative value of the
 83 evidence is substantially outweighed by the danger of unfair prejudice, confusion of the
 84 issues, or misleading the jury.

85 ~~(d)~~(f)(1) Except as provided in paragraph (2) of this subsection any accused ~~Any person~~
 86 who commits the offense of trafficking a person for labor or sexual servitude shall be guilty
 87 of a felony, and upon conviction thereof, shall be punished by imprisonment for not less
 88 than ~~one~~ ten nor more than 20 years, a fine not to exceed \$100,000.00, or both.

89 (2) Any person accused who commits the offense of trafficking a person for labor or
 90 sexual servitude against a person who is under the age of 18 years shall be guilty of a
 91 felony, and upon conviction thereof, shall be punished by imprisonment for not less than
 92 ten nor more than 20 years, a fine not to exceed \$100,000.00, or both; provided, however,
 93 that if the offense is committed against a person under 18 years of age and such person
 94 under the age of 18 years was coerced or deceived into being trafficked for labor or sexual
 95 servitude, the accused shall be guilty of a felony, and upon conviction thereof, shall be
 96 punished by imprisonment for not less than 25 nor more than 50 years or life
 97 imprisonment, a fine not to exceed \$100,000.00, or both.

98 (g) All real and personal property of every kind used or intended for use in the course of,
 99 derived from, or realized through a violation of this Code section shall be subject to

100 forfeiture to the state. Forfeiture shall be had by the same procedure set forth in Code
 101 Section 16-14-7. Prosecuting attorneys and the Attorney General may commence
 102 forfeiture proceedings under this Code section.

103 ~~(e)~~(h) Prosecuting attorneys and the Attorney General shall have concurrent authority to
 104 prosecute any criminal cases arising under the provisions of this Code section and to
 105 perform any duty that necessarily appertains thereto.

106 ~~(f)~~(i) Each violation of this Code section shall constitute a separate offense and shall not
 107 merge with any other offense.

108 ~~(g)~~(j) A corporation may be prosecuted under this Code section for an act or omission
 109 constituting a crime under this Code section only if an agent of the corporation performs
 110 the conduct which is an element of the crime while acting within the scope of his or her
 111 office or employment and on behalf of the corporation and the commission of the crime
 112 was either authorized, requested, commanded, performed, or within the scope of his or her
 113 employment on behalf of the corporation or constituted a pattern of illegal activity that an
 114 agent of the company knew or should have known was occurring."

115 **SECTION 2.**

116 Said title is further amended by revising subsections (a) and (b) of Code Section 16-6-13,
 117 relating to the penalties for violating Code Sections 16-6-9 through 16-6-12, as follows:

118 "(a) Except as otherwise provided in subsection (b) of this Code section, a person
 119 convicted of any of the offenses enumerated in Code Sections 16-6-10 through 16-6-12
 120 shall be punished as for a misdemeanor of a high and aggravated nature. A person
 121 convicted of the offense enumerated in Code Section 16-6-9 shall be punished as for a
 122 misdemeanor.

123 ~~(b)(1) A person convicted of keeping a place of prostitution, pimping, or pandering any~~
 124 ~~of the offenses enumerated in Code Sections 16-6-10 through 16-6-12 when such offense~~
 125 ~~involves keeping a place of prostitution for, the pimping for, or the solicitation the~~
 126 ~~conduct of a person under the age of who is at least 16 but less than 18 years of age to~~
 127 ~~perform an act of prostitution or the assembly of two or more persons under the age of~~
 128 ~~18 years at a fixed place for the purpose of being solicited by others to perform an act of~~
 129 ~~prostitution shall be guilty of a felony and shall be punished by imprisonment for a period~~
 130 ~~of not less than five nor more than 20 years, and such convicted person shall be fined a~~
 131 ~~fine of not less than \$2,500.00 nor more than \$10,000.00, or both.~~

132 (2) A person convicted of any of the offenses enumerated in Code Sections 16-6-10
 133 through 16-6-12 when such offense involves the conduct of a person under the age of 16
 134 years shall be guilty of a felony and shall be punished by imprisonment for a period of
 135 not less than ten nor more than 30 years, a fine of not more than \$100,000.00, or both.

136 (3) Adjudication of guilt or imposition of a sentence for a conviction of a second or
 137 subsequent offense when such offense involves keeping a place of prostitution for, the
 138 pimping for, or pandering of a person under the age of 18 years pursuant to this
 139 subsection, including a plea of nolo contendere, shall not be suspended, probated,
 140 deferred, or withheld."

141 **SECTION 3.**

142 Said title is further amended by adding a new Code section to Article 1 of Chapter 3, relating
 143 to responsibility as a defense to criminal prosecutions, to read as follows:

144 "16-3-6.

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

146 (1) 'Coercion' shall have the same meaning as set forth in Code Section 16-5-46.

147 (2) 'Deception' shall have the same meaning as set forth in Code Section 16-5-46.

148 (3) 'Sexual crime' means prostitution, sodomy, solicitation of sodomy, or masturbation
 149 for hire as such offenses are proscribed in Chapter 6 of Title 16.

150 (4) 'Sexual servitude' shall have the same meaning as set forth in Code Section 16-5-46.

151 (b) A person shall not be guilty of a sexual crime if the conduct upon which the alleged
 152 criminal liability is based was committed under coercion or deception while the accused
 153 was being trafficked for sexual servitude in violation of subsection (c) of Code Section
 154 16-5-46.

155 (c) A defense based upon any of the provisions of this Code section shall be an affirmative
 156 defense."

157 **SECTION 4.**

158 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
 159 amended by revising paragraphs (3) and (9) of Code Section 17-15-2, relating to definitions
 160 for victim compensation, as follows:

161 "(3) 'Crime' means:

162 (A) An act which constitutes hit and run as defined in Code Section 40-6-270,
 163 homicide by vehicle as defined in Code Section 40-6-393, serious injury by vehicle as
 164 defined in Code Section 40-6-394, or any act which constitutes a violation of Code
 165 Section 16-5-46 or Chapter 6 or Part 2 of Article 3 of Chapter 12 of Title 16, a violation
 166 of Code Section 16-5-70, or a violent crime as defined by state or federal law which
 167 results in physical injury, serious mental or emotional trauma, or death to the victim and
 168 which is committed:

169 (i) In this state;

- 170 (ii) In a state which does not have a victims' compensation program, if the victim is
 171 a resident of this state; or
- 172 (iii) In a state which has compensated the victim in an amount less than the victim
 173 would be entitled to pursuant to this chapter, if the victim is a resident of this state;
- 174 (B) An act which constitutes international terrorism as defined in 18 U.S.C. Section
 175 2331 which results in physical injury, serious mental or emotional trauma, or death to
 176 the victim, if the victim is a resident of this state and is outside the territorial boundaries
 177 of the United States when such act is committed; or
- 178 (C) An act of mass violence which results in physical injury, serious mental or
 179 emotional trauma, or death to the victim, if the victim is a resident of this state and is
 180 outside the territorial boundaries of the United States when such act is committed."
- 181 "(9) 'Victim' means a person who:
- 182 (A) Is injured physically, who dies, or who suffers financial hardship as a result of
 183 being injured physically as a direct result of a crime;
- 184 (B) Suffers a serious mental or emotional trauma as a result of being threatened with
 185 a crime which could result in physical injury or death; ~~or~~
- 186 (C) Suffers a serious mental or emotional trauma as a result of being present during the
 187 commission of a crime; or
- 188 (D) Suffers a serious mental or emotional trauma as a result of being trafficked for
 189 labor or sexual servitude as defined in Code Section 16-5-46."

190 **SECTION 5.**

191 Said title is further amended by revising subsection (e) of Code Section 17-15-7, relating to
 192 persons eligible for awards, as follows:

193 "(e) A person who is criminally responsible for the crime upon which a claim is based or
 194 is an accomplice of such person shall not be eligible to receive an award with respect to
 195 such claim; provided, however, that such ineligibility shall not apply if the claimant is a
 196 victim as defined in subparagraph (D) of paragraph (9) of Code Section 17-15-2."

197 **SECTION 6.**

198 Said title is further amended by revising subsection (a) of Code Section 17-15-8, relating to
 199 required findings and the amount of the award, as follows:

200 "(a) No award may be made unless the board or director finds that:

- 201 (1) A crime was committed;
- 202 (2) The crime directly resulted in the victim's physical injury, serious mental or
 203 emotional trauma, or financial hardship as a result of the victim's physical injury, serious
 204 mental or emotional trauma, or the victim's death;

205 (3) Police records, records of an investigating agency, or records created pursuant to a
 206 mandatory reporting requirement show that the crime was promptly reported to the proper
 207 authorities. In no case may an award be made where the police records, records of an
 208 investigating agency, or records created pursuant to a mandatory reporting requirement
 209 show that such report was made more than 72 hours after the occurrence of such crime
 210 unless the board, for good cause shown, finds the delay to have been justified and
 211 provided, further, that good cause shall be presumed if the claimant is a victim as defined
 212 in subparagraph (D) of paragraph (9) of Code Section 17-15-2; and
 213 (4) The applicant has pursued restitution rights against any person who committed the
 214 crime unless the board or director determines that such action would not be feasible.
 215 The board, upon finding that any claimant or award recipient has not fully cooperated with
 216 all law enforcement agencies, may deny, reduce, or withdraw any award."

217 SECTION 7.

218 Said title is further amended by revising subsection (a) of Code Section 17-17-6, relating to
 219 notification to victim of accused's pretrial release and of victims' rights and the availability
 220 of victims' compensation and services, as follows:

221 "(a) Upon initial contact with a victim, all law enforcement and court personnel shall make
 222 available to the victim the following information written in plain language:

223 (1) The possibility of pretrial release of the accused, the victim's rights and role in the
 224 stages of the criminal justice process, and the means by which additional information
 225 about these stages can be obtained;

226 (2) The availability of victim compensation and, if the victim has been trafficked for
 227 labor or sexual servitude as defined in Code Section 16-5-46, compensation available
 228 through the federal government pursuant to 22 U.S.C. Section 7105; and

229 (3) The availability of community based victim service programs."

230 SECTION 8.

231 Title 35 of the Official Code of Georgia Annotated, relating to law enforcement, is amended
 232 by adding a new Code section to Chapter 1, relating to general provisions for law
 233 enforcement officers and agencies, to read as follows:

234 "35-1-16.

235 (a) The Georgia Peace Officer Standards and Training Council and the Georgia Public
 236 Safety Training Center shall establish guidelines and procedures for the incorporation of
 237 training materials and information in:

238 (1) Methods for identifying, combating, and reporting incidents where a person has been
 239 trafficked for labor or sexual servitude, as such terms are defined in Code Section
 240 16-5-46;

241 (2) Methods for providing proper detention facilities or alternatives to detention facilities
 242 for persons who have been trafficked for labor or sexual servitude, as such terms are
 243 defined in Code Section 16-5-46, including providing information on therapeutic
 244 facilities for such persons; and

245 (3) Methods for assisting persons who have been trafficked for labor or sexual servitude,
 246 as such terms are defined in Code Section 16-5-46, including providing information on
 247 social service organizations available to assist such person.

248 (b) The guidelines and procedures listed in subsection (a) of this Code section shall be for
 249 use by law enforcement training centers monitored by the Georgia Peace Officer Standards
 250 and Training Council and monitored and funded by the Georgia Public Safety Training
 251 Center in all courses for which they have responsibility and oversight."

252 **SECTION 9.**

253 Said title is further amended by revising subsection (a) of Code Section 35-3-4, relating to
 254 powers and duties of the Georgia Bureau of Investigation, by striking "or" at the end of
 255 paragraph (11), striking the period at the end of paragraph (12) and inserting "; or" in lieu
 256 thereof, and adding a new paragraph to read as follows:

257 "(13) Identify and investigate violations of Code Section 16-5-46."

258 **SECTION 10.**

259 Said title is further amended by adding a new Code section to read as follows:

260 "35-3-4.3.

261 (a) In any investigation of a violation of Code Section 16-5-46 involving trafficking of
 262 persons for labor or sexual servitude, the director, assistant director, or deputy director for
 263 investigations shall be authorized to issue a subpoena, with the consent of the Attorney
 264 General, to compel the production of books, papers, documents, or other tangible things,
 265 including records and documents contained within, or generated by, a computer or any
 266 other electronic device.

267 (b) Upon the failure of a person without lawful excuse to obey a subpoena, the director,
 268 assistant director, or the deputy director for investigations, through the Attorney General
 269 or district attorney, may apply to a superior court having jurisdiction for an order
 270 compelling compliance. Such person may object to the subpoena on grounds that it fails
 271 to comply with this Code section or upon any constitutional or other legal right or privilege
 272 of such person. The court may issue an order modifying or setting aside such subpoena or

273 directing compliance with the original subpoena. Failure to obey a subpoena issued under
274 this Code section may be punished by the court as contempt of court."

275 **SECTION 11.**

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